1859.

SUPREME COURT OF THE UNITED STATES.

No. 172.

STEPHEN W. DOSS, APPELLANT,

vs.

WILLIAM TYACK AND LINDLEY MURRAY.

APPEAL FROM THE DISTRICT COURT, UNITED STATES, FOR TEXAS.

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In the United States district court, for the district of Texas, May term, 1848.

WILLIAM TYACK and Lindley Murray
against
STEWART NEWELL and Peter MacGreal.

Transcript of the record for the Supreme Court of the United States.

THE UNITED STATES OF AMERICA,
District of Texas, to wit:

At a district court of the United States, having and exercising the powers and jurisdiction of a circuit court of the same, for the district of Texas, begun and held at the city of Galveston, on the first Monday in May, in the year of our Lord one thousand eight hundred and forty-eight.

Present, the honorable John C. Watrous, judge of said district; James H. Cock, marshal; and Thomas Bates, clerk.

Among which were the following proceedings, to wit:

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Peter MacGreal.

Be it remembered, that heretofore, to wit, on the tenth day of July, in the year of our Lord one thousand eight hundred and forty-eight, the said William Tyack and Lindley Murray, by their solicitors, Franklin H. Merriman, Ebenezer Allen, and Sherwood and Wagner, filed in the district court here their bill complaining of and against the said Stewart Newell and Peter MacGreal, in the words and of the tenor following, to wit:

To the honorable the judge of the district court of the United States, in and for the district of Texas, the same being a court of circuit court powers and jurisdiction, sitting in equity.

William Tyack and Lindley Murray, who are residents of the city of New York, and citizens of the State of New York, bring this bill against Stewart Newell and Peter McGreal, residents of the city of Galveston, and citizens of the State of Texas, and thereupon your orators complain and say:

That heretofore, to wit, on the twenty-fifth day of September, A. D. one thousand eight hundred and forty-seven, at the city of New York, your orators and the said defendant, Stewart Newell, entered into a copartnership contract or agreement, which is in the words and figures following, that is to say:

"NEW YORK, *September 25th*, 1847.

"The undersigned have this day formed a copartnership under the firm and style of William Tyack & Co., in New York, and Stewart Newell & Co., in Galveston, Texas, upon the following terms and conditions:

"1st. That the nature of the business to be transacted by said firm shall be a commission, general, and auction business.

"2d. That the said copartnership shall commence on the 25th day of September, 1847, and terminate on the 25th day of September, 1852.

"3d. That the several parties to this contract shall contribute towards the capital stock of said firm the sum of five thousand dollars, in form and manner as follows:

"William Tyack shall contribute $5,000 in cash within 90 days.
"Stewart Newell " " " "
"Lindley Murray " " " "

"4th. That if the business shall prove such as to require an augmentation of capital, then each of the parties to this contract shall advance such amount as may be required, or his actual ability permit; and should either of said parties advance a larger proportion than the others, then for such excess of capital the party furnishing the same shall be allowed interest thereon at the rate of six per cent. per annum.

"5th. That in consideration of the expense and labor heretofore incurred by Stewart Newell in paving the way for the contemplated business, as well as his influence in the State of Texas, it is agreed and understood that, during the term of this agreement, he shall be entitled to one-quarter of the nett profits of the business before any division of said profits be made; the balance to be divided equally between the parties to this contract.

"6th. That although the name of Lindley Murray shall not at present appear in the advertisement of this copartnership, yet it is hereby expressly agreed that he is, and shall be considered, an equal partner with the other parties to this contract, and as such shall share equally in all the profits of said business.

"7th. That the business shall be conducted as follows: William Tyack and Lindley Murray shall have charge of the same in New York; the former acting as cashier, and having a general supervision of the business, and the latter having under his immediate charge the books, and the general conduct of the transaction of the firm. That Stewart Newell shall have charge of the business in all its departments in the city of Galveston; and it is further expressly understood and agreed upon, that the parties having charge of the business in New York shall, at least as often as once a month, transmit to the party in Galveston an account current of the transactions of the firm in New York; and that in like manner the party having charge of the business in Galveston shall, at least as often as once a month, transmit to the parties in

New York an account current of the transactions of the house in Galveston.

"8th. That each and all of the parties to this contract do hereby bind themselves, so long as this agreement is in effect, never to endorse for or become security for any one in any way whatsoever, or loan the moneys of the firm without the specific consent of each of the parties herein named; and in case either of the said parties shall at any time be proven to have violated this article of agreement, it is expressly agreed upon and understood that his interest in the concern shall be held liable for such dereliction, and shall from that time forth cease to be a member of this copartnership.

"9th. That in view of this business being a new one and experimental in its nature, it is hereby expressly understood, that not more than the sum of fifteen hundred dollars shall be drawn out of the concern for the personal expenses by either partner for the term of one year from the date of this contract.

"10th. That in case of any difficulties or disputes in relation to business between the parties to this contract, which cannot be amicably adjusted among ourselves, it is agreed that such difficulties shall be settled as follows, that the contending parties shall each select such umpire as to him seem fit, and that the judgment of such umpires shall be deemed binding; or in case the umpires thus chosen shall not agree, that they shall select a third, whose decision shall be final.

"In witness whereof we have hereunto set our hands and seals, this 25th day of September, in the year one thousand eight hundred and forty-seven.

Signed, WM. TYACK, [L. S.]
STEWART NEWELL, [L. S.]
LINDLEY MURRAY." [L. S.]

And your orators further show unto your honor, that at the time of the negotiation between your orators and the said defendant for the formation of the said copartnership arrangement, the said defendant held himself out to your orators as a man of sufficient means and capital to advance the said five thousand dollars; and also held out to your orators, and represented to them, that he, the said defendant, could control a great amount of profitable business in the State of Texas of the nature mentioned and expressed in the said copartnership agreement; and that your orators, relying upon the said representations, and believing the same to have been made in good faith by the said defendant, were induced thereby to enter into the said copartnership agreement; whereas your orators aver, that the said representations on the part of the said Newell were false and fraudulent, both as to his ability to advance the said amount of five thousand dollars, or to control the said amount, or any considerable amount, of profitable business, as by him represented and held out to your orators; and your orators also aver, and expressly charge, on information and belief, that the said defendant at the time of inducing your orators to enter into the said contract of

copartnership, was wholly insolvent and entirely unable to pay his debts.

And your orators further shew unto your honor, that your said orator, William Tyack, subsequent to the date of the said agreement, and in pursuance thereof, and on or about the month of November, A. D. one thousand eight hundred and forty-seven, at the city of New York, did advance the sum of five thousand dollars in cash; and which also appears by a letter written by Stewart Newell, the said defendant, to your said orator, Lindley Murray, under the date of May 5th, 1848; and further, your orators shew, that the said five thousand dollars advanced as aforesaid, by your orator, William Tyack, was employed in the purchase of goods under the said agreement, and in paying freight charges and expenses on the same, and also in the payment of freight charges and expenses on other goods, also purchased by your orators and the said defendant, in the name of "Stewart Newell & Co."

And your orators further shew unto your honor, that the said defendant and your orators, in addition to the goods purchased with the money advanced by your said orator, William Tyack, about the same time, and during the month of November and the forepart of December, A. D. 1847, extended their purchases of goods in the city of New York to the amount of over seventeen thousand dollars, and as your orators believe, to the amount of about eighteen thousand dollars; that fourteen thousand seven hundred and eighty-six $\frac{4}{100}$ dollars worth of said goods were purchased on a credit, and as your orators believe, by bills drawn by "Stewart Newell & Co." on "William Tyack & Co.;" that the said purchases of goods were destined for the Texas market, and shipped from New York to the port of Galveston, to be sold on the joint account and for the joint benefit of your orators and the said defendant; and that the whole cost of said goods at invoice prices in the city of Galveston, with the freight charges and incidental expenses, was, as your orators are informed, and believe to be true, not far from nineteen thousand dollars.

And your orators further shew unto your honor, that from information and belief the whole of said credit purchases remain unpaid; that the amount now outstanding against your orators and the said defendant on the purchases of the said goods is near fifteen thousand dollars; and that the same is all now due, with the exception of about one thousand dollars.

And your orators further shew unto your honor, that the said defendant, Stewart Newell, opened the said firm or house of "Stewart Newell & Co.," in the city of Galveston, on or about the first of January, A. D. one thousand eight hundred and forty-eight, and commenced the sale of the said goods about that time, and has since continued to do business in the city of Galveston down to the present time, under the said name, style, and firm of Stewart Newell & Co., and that since opening the said firm or house has sold and disposed of the said goods to the amount of nine thousand and two hundred dollars worth or over, as lately stated by said Newell to the agent of your orators, William E.

Warren, which said statement was, in connexion with a written memorandum in the handwriting of the said Newell, delivered at the time to your said orators' agent; and, further, that the only remittances made by the said Newell to your orators, and the whole amount remitted to them, or to the firm of "William Tyack & Co.," consisted of eighteen bales of cotton and thirty barrels of molasses, of the value of about seven hundred and fifty dollars.

And your orators further shew unto your honor, that since the commencement of the sale of the said goods at Galveston by the said defendant, he, the said defendant, from time to time, has falsely and fraudulently held out and pretended to your orators that he had actually laid out and expended in the city of New Orleans the said amount of five thousand dollars, agreed by him to be advanced as capital in the said copartnership agreement; whereas in fact and truth, as your orators have very lately learned, the said defendant has only made purchases in the said city of New Orleans to the amount of two hundred and thirty-four dollars or thereabouts; and that now the said defendant acknowledges that amount to have been purchased with the proceeds of the said goods obtained in the city of New York on the joint account of your orators and the said defendant.

And your orators further show unto your honor, that instead of the said correct monthly statement provided for in the said contract, the said defendant has falsely and fraudulently held out and pretended to your orators that he was unable to sell but a small portion of the said goods; that he sold for cash only, or for staple products of cash value; and that he had on hand, and safe as against losses, some eighteen thousand dollars worth of goods, thereby intending to lull the suspicions of your orators by pretending great carefulness and prudence; whereas your orators are informed, and believe, and therefore charge the truth to be, that the said defendant at the time of holding out these false and fraudulent representations had disposed of over nine thousand dollars worth of said goods, and most of the avails thereof appropriated to his own private use and individual benefit; and as your petitioners also charge, on information and belief, with full knowledge of his insolvency, and without the remotest prospect of ability to make good to your orators any considerable portion of the funds so misapplied by him, and leaving your orators alone to bear the burden of discharging the said copartnership debts as aforesaid contracted.

And your orators further show, that the said defendant, further contriving and intending to impose on your orators, has held out and pretended to them that he had purchased on the Trinity river some three hundred and twenty bales of cotton, to be paid for in goods at Galveston, out of the stock of goods hereinbefore mentioned, and that he intended to consign the same to your orators at New York as soon as the same could be got down from the said Trinity river to the said city of Galveston; but your petitioners aver, upon information and belief, that the said defendant has neither purchased or contracted for cotton to any considerable amount as pretended by him; and your orators verily

believe that the said further false and fraudulent representations have been put forth with a view further to deceive, impose upon, and injure your orators in the premises.

And your orators further shew unto your honor, that the said Stewart Newell has sold and disposed of large amounts of said goods to his individual creditors, and to apply on his individual debts; that to one Alexander Edgar, of the city of Galveston, the said defendant so sold the amount of twenty-one hundred dollars or over, to be so applied on an individual debt due from the said defendant to said Edgar; that he, the said defendant, so sold to "Lewis & Co.," of the city of Galveston, the amount of sixty-four dollars worth of said goods, or over, to be applied on his individual debt to said "Lewis & Co.;" and, as your orators are informed, and believe, the said defendant has sold divers other large amounts of said goods, and also misapplied the same to the payment of his individual debts, in violation of his duty as a partner, and in violation of the rights of your orators, and in fraud of the creditors of your said orators and the said defendant, but which said other large amounts your orators cannot now specify, state, and set forth; and that also the said defendant lately, as your orators are informed and believe, apprehending some trouble in relation to the said store of goods, offered to mortgage the same to the said Alexander Edgar for an antecedent debt to a large amount, due from the said defendant individually to the said Edgar; and which said store of goods at the time said defendant alleged to be of the value of fifteen thousand dollars; and which said conduct on the part of the said defendant your orators allege is contrary to equity.

And your orators further show unto your honor, that the said defendant has put a very considerable amount of the said goods which were in no wise damaged, and to the amount of two hundred and forty-eight dollars, or over, into the auction market in the city of Galveston; that said defendant attended the sale of the said goods; that the said goods sold for less than one half their value; that said defendant well knew, and was fully apprised, that said goods were being sacrificed, but nevertheless without any cause whatever, allowed the said auction sales to go on until the whole of said goods last above mentioned were sold; and your orators charge and insist, that the said conduct on the part of the said defendant was in violation of his duty as a copartner with your orators, and was a wanton violation of your orators' just rights and interests; and further charge the same to have been untrustworthy conduct on the part of said defendant.

And your orators further show unto your honor, that there are now on hand at the said store of "Stewart Newell & Co.," in the city of Galveston, of the said goods to the amount of ten thousand dollars *and* five hundred dollars very nearly; that there are also goods on hand to the amount of about three hundred dollars, as your orators are informed, and believe, on consignment from some third person or party, and to be sold on commission; that there are also some notes, accounts, books, debts, and choses in action belonging to the said firms, but to what

amount or value, your orators cannot state, but from their best information and belief, of the value of one thousand dollars; and your orators further shew and state, from their best knowledge, information, and belief, that the whole assets of the said firm of "Stewart Newell & Co.," including any and all remittances made by "Stewart Newell & Co. to William Tyack & Co.," could not be made available to raise or make the sum of ten thousand dollars.

And your orators further show unto your honor, that the said firm or firms are insolvent; that the debts of the said firm cannot be paid from the assets now on hand; that the outstanding liabilities cannot be met; and that the said defendant, if suffered to continue in the possession and to have the control of the said goods, and manage the affairs of the said firm, as he has hitherto done, will wholly ruin and impoverish your orators, besides doing great injustice to the said firm.

And your orators further show unto your honor, that the said defendant very lately, and on or about the 28th day of June last past, and in defiance of the interposition of your orators, through their said agent William E. Warren, to prevent the same, attempted to apply a demand in favor of said firm against one Samuel Maas, of Galveston, to the payment of an individual debt of him, the said defendant, and was only prevented by a refusal of the clerk of the said Maas to pay the same.

And your orators further show unto your honor, that they are greatly apprehensive that the said defendant will make use of the name of the said firm of "Stewart Newell & Co." to increase the liabilities of your orators in an unjustifiable manner, and that he has already done so, to their great prejudice; and they greatly fear that the said defendant, if suffered longer to use the said firm name, will involve your orators in inextricable difficulties, and thereby wholly ruin them in property and credit.

Your orators further show, that the said house of "William Tyack & Co.," in New York, has existed merely in name under the said copartnership agreement; that it has done no business, except to receive some slight remittances from the said house of "Stewart Newell & Co.," of Galveston; and that it was not designed for said firm of "William Tyack & Co." to embark in business under the said contract, until such time as adequate remittances were received from the said firm at Galveston; all the capital paid in, and stock of goods purchased, having been put into the said concern at Galveston by the arrangement of the parties to said contract.

And your orators further show, that neither the said defendant nor your orator, Lindley Murray, have paid in any part or portion of the said five thousand dollars, severally agreed to have been paid in by them. But, nevertheless, your orators, jointly and severally, insist that they are well entitled to be protected against the fraud and misconduct of the said defendant, in consequence of the joint liabilities outstanding against the said defendant and your orators; and further, your said orator, William Tyack, claims and insists, that the said co-

partnership should and ought to be dissolved and go into liquidation, for the reason, among other things, that the capital agreed on as the basis of security to the parties, has not been paid in by the other parties.

And your orators further show, that the said defendant, since the co-partnership agreement was made, and the goods purchased as hereinbefore stated, has already placed it beyond the power of your orators to obtain from the said goods, or the proceeds thereof, more than one-half of the amount of their cost, either for their own benefit or the benefit of their said creditors; that they are already measurably remediless in the premises, and they greatly fear will become hopelessly so, unless they can have the aid and interposition of this honorable court to protect them through its remedial and restraining process, and otherwise.

And your orators further show, that they have great cause to fear, and do greatly fear, that unless a receiver is appointed in the first instance to take possession of the said goods, now remaining on hand and belonging to the said firm, as well as the books, papers, notes, debts, choses in action, also belonging to the said firm, the same will be sold, secreted, transferred, assigned, or in some way disposed of, by the said defendant, to the great detriment and injury of your orators and the creditors of the said firm.

And your orators further show unto your honor, that the said defendant, combining and confederating with divers other persons and individuals to defraud your orators, at present unknown to your orators, but whose names, when discovered, your orators pray may be inserted herein, with proper and apt words to charge them in the premises, is now making some disposition of the said co-partnership property by way of some pretended assignment, fraudulently to place the same beyond the reach of process; the better to embarrass your orators, and to hinder and delay them in any proceeding to have the said property applied to the payment of the debts of the said firm, is now engaged in shipping the said goods; and which said proceedings, had and intended on the part of the said defendant and his confederates, are contrary to equity, and in violation of the just rights of your orators.

And your orators, in consideration of the premises, and the manifold injuries, and great injustice had, done, and intended on the part of the said defendant towards your orators, and his untrustworthy conduct towards your orators, do humbly pray that the said co-partnership may be dissolved; that the said defendant, Stewart Newell, may be compelled to account to your orators, as well as your orators, or either of them, to him, under the direction and in the manner prescribed by this honorable court; that the concerns of the co-partnership business, and all matters connected therewith, directly or indirectly, may go into liquidation. That the partnership effects, and the proceeds of the original partnership effects, whether standing in the name of the said "Stewart Newell & Co.," or in the individual name of the said Stewart Newell, may go into the hands of a receiver appointed by, and to be under, the control and

direction of this honorable court, and who shall be empowered to collect, keep, and take care of all and singular the property, goods, chattels, effects, choses in action, accounts, debts, and things of the said firm of "Stewart Newell & Co.," and also the said firm of William Tyack & Co., and who shall pay over and apply the said property, goods, chattels, &c., to the payment of the said co-partnership debts or otherwise, as directed from time to time, or by final decree from this honorable court; and that the said Stewart Newell may be decreed to pay to your orators, or either of them, such sum or sums of money as to the said court shall appear equitable; and that your orators, or either of them, or the said defendant, may have such decree as shall seem meet and proper to the court in the premises. And your orators further pray, that the said defendant may be enjoined and restrained from selling, assigning, transferring, or in any manner disposing of, or interfering with, the said co-partnership, property, effects, choses in action, books of account, debts, dues, and demands, or proceeds of the said co-partnership property whether held or standing in the name of the firm of "Stewart Newell & Co.," or in the individual name of the said defendant, until the further order of the court thereon; and that the said Stewart Newell may also be enjoined and restrained from further using the name of the said firm for the purpose of creating any other or further liabilities on the part of your said orators to any person or persons whomsoever; and further pray, that a preliminary receiver may be appointed to take, keep, and preserve all and singular the said property and effects, &c., until such appointment may be confirmed on motion to the court, or some other person substituted or appointed as such receiver on such occasion, on motion, and with such powers as may be prescribed by the court; and that your orators may have such other, further, or different relief in the premises as may be agreeable to equity.

To the end, therefore, that your orators may have the relief herein prayed for, and such other, and further, or different relief as may seem proper; and to the end, therefore, that the said Stewart Newell may show cause, if he can, why the said relief herein prayed for should not be granted, may it please your honor to grant unto your orators a writ of subpœna to be issued out and under the seal of this honorable court, and to be directed to the said defendants, commanding them at a day certain, and under a certain penalty therein limited, personally to be and appear before your honor in this honorable court, and then and there full, true, and perfect answer make to all and singular the premises, and further to stand to, and perform, and abide such further order, direction, and decree therein as your honor shall seem meet; and that the said Stewart Newell, upon being served with a copy of this bill, may be bound by all the proceedings in this cause; and your orators, &c.

WILLIAM TYACK,
LINDLEY MURRAY,
Complainants.

F. H. MERRIMAN,
E. ALLEN,
SHERWOOD & WAGNER,
Attorney and counsel for complainants residing at Galveston.

On this day of July, one thousand eight hundred and forty-eight, personally appeared before me William E. Warren, and being by me duly sworn, doth depose and say, that he is the agent and attorney in fact for the said complainants William Tyack and Lindley Murray, whose names are subscribed to the foregoing bill of complaint; that the oath of neither of the said complainants could be obtained to the jurat of this bill without much delay, as they reside in the city of New York; that deponent is better acquainted with the facts as a whole than either of the said complainants; and further says he has heard the foregoing bill of complaint read, that he knows the contents thereof, and the same is true to the best of his knowledge, information, and belief.

And this deponent further says, that as to the payment in of the capital advanced by William Tyack, mentioned in the bill, in addition to the sources of information, deponent learned the same by way of a letter, as mentioned in the said bill, written from the said Newell to the said complainant, Lindley Murray; that as to the amount of goods purchased on the joint account of the said copartnership, this deponent derived his information from the creditors in New York, in connexion with the statements contained in the letters of the defendant to the plaintiffs, and also in connexion with memorandums made in the books of "Stewart Newell & Co.," at Galveston, which deponent has seen; that as to the amount of sales of said goods at Galveston, as mentioned in the said bill of complaint, deponent derives his knowledge from a statement of the said Stewart Newell to deponent, in connexion with a written memorandum in the handwriting of the said Stewart Newell, and delivered by him to said deponent; that as to the statements in the said bill relative to the said Newell's appropriating the sales of the said goods, or the avails thereof, to his individual purposes, deponent derived his information from the citizens of Galveston, in connexion with the affidavits of Alexander Edgar and Allen Lewis, and in connexion with the inspection of the books of the said firm of "Stewart Newell & Co.;" that as to the remittances from the said defendant, Stewart Newell, to his partners in New York, deponent derived his knowledge from the statements of the said Stewart Newell himself, in which he stated to deponent that all the remittances he had made to the plaintiffs from the sales of said goods, consisted of eighteen bales of cotton and thirty barrels of molasses; that as to the sacrifice of the said goods at auction, mentioned in the said bill of complaint, deponent derived his knowledge from the statement and affidavit of E. O. Lynch, of the city of Galveston, who sold the said goods as auctioneer; that as to the insolvency of said Newell deponent says, the fact is notorious in the city of Galveston, the place of said Newell's

residence; that as to the insolvency of said firm as such, charged in the said bill of complaint, deponent says, he derives his information and knowledge from an examination of the goods and assets of the said firm; and from his knowledge of the assets and liabilities of the said firm, deponent has no doubt that the said firm is unable to pay its liabilities from any capital paid in or assets on hand within from three to five thousand dollars; and the deponent further says, he has no doubt whatever that the said Newell will fraudulently transfer, secrete, or assign the goods and assets of the said firm, with a view to place them beyond the reach of process, unless he is in some manner immediately restrained by the process or authority of the court; and deponent further says, that said goods now on hand, and belonging to said firm of "Stewart Newell & Co." have greatly depreciated in value since the same were purchased, and on an average deponent thinks of thirty per cent.

And this deponent, the said William E. Warren, further says, that the said defendant is now engaged in removing the said goods on board the schooner Native or Alamo, now lying in the port of Galveston, with a view to ship the same, and as deponent believes with intent to remove the said goods beyond the jurisdiction of this honorable court, and that if the said goods are thus removed the complainants' remedy will be, in the belief of this deponent, thereby lost.

W. E. WARREN.

Sworn to and subscribed before me, July 10th, 1848.

J. C. WATROUS,
U. S. judge.

UNITED STATES DISTRICT COURT,
District of Texas.

WILLIAM TYACK AND LINDLEY MURRAY
vs.
STEWART NEWELL.

GALVESTON COUNTY, *ss:*

Alexander Edgar, of said county, being duly sworn, says: That he has been a long time in business connexion with Stewart Newell, the defendant in the above entitled cause; that the said Stewart Newell has heretofore received moneys to and for the use and benefit of this deponent to the amount of from ten to twenty thousand dollars, as this deponent has been informed and believes to be true; and that the said Newell now has in his hands, and which he owes to this deponent, moneys to the amount of ten thousand dollars or over, from the best accounts deponent can get of the situation of the business intrusted by deponent to the said Stewart Newell; that the said amount, more or less, has been due a long time to deponent, and for a year and more; and deponent further says, that, after the said Newell arrived from New York, the latter part of last fall or forepart of winter, with the goods in controversy in the above cause, and which then amounted to $20,000 or

over, as the said Newell stated to deponent, deponent believing the said goods to have been purchased with his, deponent's money, pressed the said Newell for payment and liquidation of his said demand; and that said Newell at that time offered to let deponent have five thousand dollars worth of the said goods upon the strength and on account of the property which said Newell had previously sold for deponent, and that deponent agreed to take the said five thousand dollars worth of goods; that, some few days afterwards, deponent took of the said goods to the amount of about fourteen hundred dollars worth, and from time to time has taken of the said goods, in pursuance of the said agreement, to the amount of about twenty-one to twenty-three hundred dollars in the aggregate, all of which were obtained at the store of "Stewart Newell & Co.," in the city of Galveston, previous to the commencement of this suit; and this deponent further says, that the sale and delivery of the said goods, by Stewart Newell to him, was in no wise connected or intended as a transaction between deponent and Tyack, Murray, and Newell, but as between this deponent and the said Newell alone.

And this deponent further says, that, about six weeks since, in conversation with said Stewart Newell, deponent learned from him that he expected some one from New York soon to be here to make some examination, or to take some proceedings on the part of the partners of said firm residing in New York; that deponent concluded at the time, from the conversation, that said Newell apprehended some trouble in relation to the said store of goods in his possession, and that said Newell, at the time, offered to mortgage the said store of goods to deponent, and which said Newell then represented to amount to near fifteen thousand dollars; that said Newell so offered to mortgage the said store of goods to deponent without any advance of money on the part of deponent; that deponent, not fully understanding the object of the said Newell in proposing to mortgage the said goods, took time to consider on the proposal; that two or three days afterwards, deponent was informed by said Newell that his reason for wishing to mortgage the said goods was that he anticipated some trouble in relation to the said store of goods, but deponent did not learn precisely what the trouble was to be which the said Newell anticipated; that deponent immediately thereupon conferred with Thomas M. Joseph, esq., as to the propriety of his taking the proposed mortgage on the said store of goods, and upon being advised by the said Joseph that it would be improper for deponent to take said mortgage, deponent declined to have any thing further to do in the matter, and informed the said Newell to that effect; and further deponent saith not,

ALEX'R EDGAR.

Sworn and subscribed before me, this 10th day of July, 1848.

JOHN C. WATROUS,
United States judge.

1367.

UNITED STATES DISTRICT COURT,
District of Texas.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL.

GALVESTON COUNTY, *ss:*

Personally came and appeared before me Michael Keating, of the said county, and who by me being duly sworn, doth depose and say, that he, this deponent, is the clerk of Samuel Maas, a merchant of the city of Galveston, now absent from the State, and that during the absence of the said Maas, he, this deponent, has charge of the business of the said Maas, as though the said Maas was here in person; that this deponent has also charge of the books of the house, and transacts the business of the same, and that this deponent has been engaged by the said Maas in his said business for about one year last past; and this deponent further says, that the said Samuel Maas, as appears by the books of the said Samuel Maas, is indebted to the firm or house of Stewart Newell & Co. in the sum of thirty dollars, or thereabouts; and that the said indebtedness was contracted during the four months last past; and this deponent further says, that on or about the twenty-eighth day of June, A. D. 1848, the said Stewart Newell called upon this deponent, in his capacity of clerk of the said Maas, and desired and requested this deponent to arrange the indebtedness of the said Samuel Maas to the said Stewart Newell & Co., in the following manner, viz: For this deponent to deliver, in his capacity of clerk of the said Samuel Maas, to one Scott, a baker, of from three to four thousand bricks, making the amount of indebtedness about the same of the said Samuel Maas, to the said Stewart Newell & Co., for the purpose of settling an indebtedness of the said Stewart Newell to the said Scott; and further this deponent saith not.

MICHAEL KEATING.

Sworn and subscribed before me, this 10th day of July, A. D. 1848.
A. M. HUGHES, *Com'r.*

The master in chancery will appoint a receiver in accordance with the prayer of the bill, upon a compliance with the usual terms.
July 10th, 1848.

JOHN C. WATROUS, *Judge.*

I acknowledge myself security for all costs in this case.
July 10th, 1848.

N. B. YARD.

And afterwards, on the 10th day of July, A. D. 1848, Thomas Bates, the master in chancery to whom was referred the appointment

of a receiver in this cause, submitted his report in words and figures as follows, to wit:

District court of the United States, in chancery, district of Texas.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL.

I, Thomas Bates, master in chancery, to whom was referred the appointment of a receiver in the above entitled cause, respectfully report, that the above named plaintiffs have proposed before me N. B. Yard, of the county of Galveston, to be appointed receiver of the property in question in this cause, with Albert Ball and Henry Hubbel as his securities. I have therefore appointed said N. B. Yard receiver as aforesaid in said cause, and the said bond, with the securities as proposed, having been given in the sum of twenty thousand dollars, and have issued a certificate of such appointment to said receiver; which is most respectfully submitted.

THOMAS BATES,
Master in chancery.

And afterwards, on the same day, that is to say, on the tenth day of July, A. D. 1848, N. B. Yard, the receiver appointed in this cause, filed his bond in words and figures as follows, to wit:

THE UNITED STATES OF AMERICA,
District of Texas.

Know all men by these presents, that we, N. B. Yard, Albert Ball, and Henry Hubbell, of the city of Galveston, within the district of Texas, are held and firmly bound, unto the President of the United States of America, in the sum of twenty thousand dollars, lawful money of the United States, to be paid to the said President, his successors in office, or whomsover he or they shall direct; for which payment we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the 10th day of July, A. D. one thousand eight hundred and forty-eight.

Whereas by an order of the honorable the judge of the district court of the United States aforesaid, for said district, and the proceedings thereon, on the tenth day of July, in the year aforesaid, the said N. B. Yard was duly appointed receiver in a certain cause instituted in the said court by William Tyack and Lindley Murray, complainants, against Stewart Newell, defendant, of and concerning the copartnership property of the parties to the said suit or cause:

Now the condition of this obligation is such, that if the said Yard shall well and truly perform the trust and office of receiver of the copartnership property in question in said cause, and shall conform to

such directions as the said court may from time to time give touching the disposal and management of the said property, then this obligation to be void, otherwise to remain in full force and virtue.

N. B. YARD, [SEAL.]
ALBERT BALL, [SEAL.]
HENRY HUBBELL. [SEAL.]

Signed, sealed, and delivered in presence of—
H. B. MARTIN,
SAM. HINTON.

Form of the above bond approved.

THOS. BATES,
Master in chancery.

And afterwards, on the eleventh day of July, A. D. 1848, the complainants, by their solicitors, filed the affidavit of Lorenzo Sherwood, in words and figures as follows, to wit:

UNITED STATES DISTRICT COURT,
District of Texas.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL.

Personally appeared before me Lorenzo Sherwood, one of the solicitors for the complainants in the above cause, and being duly sworn says, that the goods mentioned in the bill of complaint in this cause have been shipped, and are now on their way off the harbor of Galveston, as deponent is informed and believes, to parts unknown to deponent; and deponent further says, that a writ of assistance is necessary to enable the receiver in this cause to obtain possession of the said goods.

LORENZO SHERWOOD.

Sworn to and subscribed before me, this 11th July, 1848.
THOS. BATES, *Clerk.*

Whereupon the court made the following order, to wit:

To the clerk of the United States court, for the district of Texas:

You will issue, in accordance with the above affidavit, a writ of assistance to the marshal in the above entitled cause.

Given under my hand and seal this 11th day of June, A. D. 1848.
JOHN C. WATROUS, [SEAL.]
United States judge.

And in pursuance of the foregoing order of the court a writ of assis-

tance was issued by the clerk of said court on the 11th day of July, A. D. 1848, in the words and of the tenor following, to wit:

UNITED STATES OF AMERICA,
District of Texas.

The President of the United States of America, to the marshal, or any of his lawful deputies, of the district of Texas, greeting:

Whereas it appears in a certain cause, instituted in the district court of the said United States, having and exercising the powers and jurisdiction of a circuit court of the same, for the district of Texas, by William Tyack and Lindley Murray, against Stewart Newell; and whereas the honorable John C. Watrous, judge of said court, has this day ordered that a writ of assistance issue in the above cause:

You are, therefore, hereby commanded to aid, protect, and assist N. B. Yard, the receiver in this cause, appointed to take into his possession all of the co-partnership effects, books, &c., &c., of Stewart Newell & Co., of the city of Galveston. You are, therefore, further commanded to use all lawful means to place and establish the said receiver in the full, perfect, and undisturbed possession of all and singular the said effects, books, &c., of the co-partnership of said Stewart Newell & Co., of Galveston.

Witness the honorable John C. Watrous, judge of said court, and seal of court, this 11th day of July, A. D. eighteen hundred
[SEAL.] and forty-eight, and seventy-third year of the independence of the United States.

THOMAS BATES, *Clerk.*

And afterwards, to wit, on the 11th day of July, A. D. 1848, Stephen W. Doss, by his solicitors, filed his petition in words and figures as follows, to wit:

In the United States district court, for the district and State of Texas.

WILLIAM TYACK & LINDLEY MURRAY
vs.
STEWART NEWELL. } In chancery.

In this case Stephen W. Doss, a resident of Brazoria county, in the State of Texas, and a citizen of said State of Texas, by his solicitors, Ovid F. Johnson and A. P. Thompson, comes and represents to the court, that the receiver heretofore appointed in this case, Mr. N. B. Yard, has, under color and pretext of his appointment as said receiver, taken into his possession a large amount of merchandise, the property of this complainant; which merchandise was in no manner or wise either the property or in the possession of the said defendant, Newell, or of any firm of which said defendant or said complainants are partners; that the said receiver seized the said merchandise when in the store of said Doss, in his quiet and undisputed possession, secured in said store, (which is in the city of Galveston,) by the doors and win-

dows of the same being locked and fastened in the usual manner; that the said receiver, in order to take said goods and merchandise, forced and broke the locks of said doors, or some of them, in the night time, as this complainant believes, in violation of the legal and equitable rights of this complainant and of the law. All which this complainant is ready to prove to the honorable court.

In consideration of all which this complainant prays this honorable court to order that the said receiver forthwith restore the said property, so illegally taken, to the possession of this complainant, and grant him such other and further relief as in its judgment may be lawful.

A. P. THOMPSON,
OVID F. JOHNSON.

And thereupon, to wit, on the 11th day of July, A. D. 1848, a subpœna was issued in due form from the said district court, in the words and of the tenor following, to wit:

THE UNITED STATES OF AMERICA,
District of Texas.

The President of the United States of America, to Stewart Newell, greeting:

You are hereby commanded to appear personally before the honorable the United States district court, exercising the powers and jurisdiction of a circuit court of the United States, at a court to be holden in the city of Galveston, in and for said district, on the first Monday of August next, or wheresoever the said court shall then be, to answer a bill exhibited against you by William Tyack and Lindley Murray; and to do further and to receive what the said court shall have considered in that behalf.

And this you are not to omit, under the penalty of two hundred and fifty dollars.

Witness the honorable John C. Watrous, judge of said court, and seal of court, at the city of Galveston, this 11th day of July, A. D. eighteen hundred and forty-eight, and seventy-third year of the independence of the United States.

THOMAS BATES, *Clerk.*

The defendant is required to enter his appearance in the above suit, in the clerk's office, on or before the first Monday of August next, otherwise the bill will be taken as confessed.

THOMAS BATES, *Clerk.*

Upon which subpœna is the following endorsement of service, to wit:

Received, 11th July, 1848, and executed the 15th day of July, 1848, by serving the defendant in person with a true copy of this subpœna.

JAMES H. COCKE, *Marshal*,
By SAMUEL HINTON, *Dep. marshal.*

Which bill was then afterwards, and by leave of the said court, upon the twelfth day of July, in the year of our Lord one thousand eight hundred and forty-eight, amended by the said William Tyack and Lindley Murray, by their solicitors, by making the following additions thereto and alterations therein, to wit:

UNITED STATES DISTRICT COURT,
District of Texas.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL.
} In equity.

Amendments to complainants' bill of complaint.

I. On page first of the bill, strike out all after the words "William Tyack and Lindley Murray," down to and including the words "your orators complain and say," and insert in lieu thereof the following, viz., "who are residents of the city of New York and citizens of the State of New York, bring this bill against Stewart Newell, who is a resident of the city of Galveston, and a citizen of the State of Texas, and Stephen W. Doss, who is a resident of the county of Brazoria, and citizen of the State of Texas; and thereupon your orator[s] complain and say."

II. After the word "defendant," in pages 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, down to and including the words "creditors of the said firm," insert the word "Newell," where the same does not occur.

III. Strike out all on the 10th page after the words "creditors of the said firm," down to and including the words "just rights of your orators," and in the place thereof insert the following, that is to say: "And your orators further show unto your honor, that the said defendant, Stewart Newell, combining and confederating with the said Stephen W. Doss, and divers other persons and individuals at present unknown to your orators, but whose names, when discovered, your orators pray may be inserted herein, with proper and apt words to charge them as parties defendants, is making a fraudulent disposition of the said co-partnership property, by way of some pretended transfer of the store of goods belonging to the said firm of Stewart Newell & Co. to the said Stephen W. Doss; but which, your orators charge and aver, is a mere sham sale, (if any,) and done with the intent to place the said co-partnership property beyond the reach of process, and to prevent any remedy on the part of your orators against the said co-partnership property.

"And your orators further show unto your honor, that the said defendants, Stewart Newell and Stephen W. Doss, apprehending some legal process on the part and in the behalf of your orators to place the said copartnership property in the custody of the law, are now engaged by themselves, their agents, servants, and divers evil disposed persons, in secreting, scattering, running off, the said property from the said store of Stewart Newell & Co., in the said city of Galveston, to prevent

the same from being reached by process; and as evidence of the bad and unlawful intent on the part of the said defendants, your orators charge and aver, that the same is being done in the night time by a large number of irresponsible hands in the employment of the said defendants; and that the said defendants are now placing the large bulk of the said store of goods on board the sloop "Alamo," to be sent this night out of the port of Galveston to parts unknown, and as your orators believe out of the jurisdiction of this court.

"And your orators further show unto your honor, that a petition was lately filed in the district court of the State of Texas, for the first judicial district, in favor of your orators against the said defendant, Stewart Newell, which said petition was filed on or about the third day of June, A. D. 1848, and which said petition, among other things, charged the said defendant, Newell, with fraud towards his copartners, and also prayed for a dissolution of the said firm; and also prayed for an injunction, and the appointment of a receiver in the said cause; that such proceedings were had in the said cause, that an injunction was issued in said cause restraining the said Stewart Newell, among other things, from selling, assigning, or disposing of the said copartnership property; that a receiver was also appointed in the said cause; that afterwards, and while motions were pending in the said court in relation to the question whether a receivership should be continued or denied, and while the said partnership property was in the custody of the sheriff of the county of Galveston, under a writ of seizure which had also been issued in said cause, that while the matters were so pending in the said district court, the said defendant became, and was fully apprised, as your orators are informed and believe, of the nature of the case, and that the said property in controversy was copartnership property; that he had due and full notice of the interest of your orators; and that he, the said defendant, Doss, in advance of a decision of the said court releasing the said copartnership property from custody of the sheriff, fraudulently made an arrangement with the said defendant, Newell, to assist the said Newell to run off the said property as soon as the same should be released by any order of the said district court; that an order of the said district court releasing the said property from the custody of the sheriff was made on the tenth day of July, 1848, and that immediately thereafter the said defendants fraudulently commenced their proceedings to carry off said property as hereinbefore stated and set forth; and your orators pray that said proceedings in the said district court may, if necessary, be used as evidence on any motion, proceeding, or hearing in this cause.

"And your orators further show unto your honor, on information and belief, that the said defendant, Doss, is not a merchant, but that he is a cooper by trade; that he is the brother-in-law of one Peter McGreal, of Brazoria, who has been, and is, connected in some way as agent or otherwise with the said Doss in the fraudulent transactions hereinbefore mentioned; and further your orators aver, upon information and belief, that the said McGreal is the real principal in the said

fraudulent transactions, and that he uses the name of the said Doss as a cover to the said frauds hereinbefore mentioned, in connexion with the said Newell; and further aver that the said McGreal had full knowledge of the proceedings in the said district court, and participated in the same, and had full knowledge of the frauds on the part of the said Newell, and has assisted in the concoction of the same; wherefore your orators will insist that knowledge on the part of the said McGreal, whether as principal or agent, was and is knowledge to the said defendant, Doss; and your orators pray that in case it may be necessary the said Peter McGreal may be made a party defendant to this your orators' bill of complaint, with the necessary words, by way of amendment, to charge him in the premises.

And your orators further show unto your honor, on information and belief, that the said defendants pretend that as a consideration of a sale of the said goods the said defendant, Doss, transferred to said Newell some land titles, standing either in the name of the said Doss or the said Peter McGreal, but of what, or where located, your orators are ignorant; but if any such land titles were so transferred your orators charge that the same was a sham consideration, and of no present value, and entirely unavailable in liquidation of the demands of the creditors outstanding against the said firm of Stewart Newell & Co.; and if said land titles were so taken as a pretended consideration, your orators charge it to have been done as a more effectual cover to the said fraudulent transactions, and merely intended the more deeply to embarrass, hinder, and delay your orators, and wholly to harass and defeat them in establishing and enforcing their just rights.

4th. On page line, insert after the word defendant, "Stewart Newell."

5th. On page line, after the words Stewart Newell insert "or of the said defendant, Stephen W. Doss."

6th. On page line strike out the word "defendant," and insert the words "defendants or either of them," in the place thereof.

7th. On page line strike out "defendant," and insert in the place thereof "defendants."

8th. On page line strike out the word "defendant," and insert in the place thereof "defendants or either of them."

9th. On page after the words "agreeable to equity," in the line, insert "and your orators further pray that the pretended sale from the said Stewart Newell to the said defendant, Stephen W. Doss, may be decreed to be fraudulent and void as against your orators, and that the same may be set aside, and the said property may be applied to the payment of the creditors of the said firm of Stewart Newell & Co."

10th. On page , after the words "Stewart Newell," insert "and also the said defendant, Stephen W. Doss."

11th. On same page and line strike out the word "he," and insert in place thereof "they."

12th. On same page, line , insert after the words "Stewart Newell," "and the said Stephen W. Doss."

And now at this day, that is to say, on the twelfth day of July, A. D. 1848, the said complainants, William Tyack and Lindley Murray, by leave of the court for that purpose had and obtained, by their solicitors, made the foregoing amendments, and pray to have the same incorporated in their said bill of complaint.

MERRIMAN, ALLEN,
SHERWOOD & WAGNER,
Solicitors, and of counsel for complainants.

On this 12th day of July, A. D. one thousand eight hundred and forty-eight, personally came before me William E. Warren, who, being by me duly sworn, says he is the agent and attorney in fact of the above named complainants; that he has read and compared the foregoing amendments to said complainants' bill of complaint, and that the same are true of his own knowledge, except as to the matters therein stated to be on information and belief; and as to those matters he believes it to be true; and deponent further says, that the said bill of complaint, as amended, is true, to the best of his knowledge, information and belief. W. E. WARREN.

Sworn and subscribed before me, this 12th day of July, 1848.
JOHN C. WATROUS,
United States judge.

The defendant, Stephen W. Doss, is required to answer the following interrogatories, numbered 1, 2, 3, &c.:

1st. How long have you been in the city of Galveston before the 10th day of July, 1848?

2d. On what business did you come, and whose solicitation or suggestion?

3d. Are you a brother-in-law of Peter McGreal, of Brazoria?

4th. What is and has been your trade or occupation in life?

5th. Who engaged the sloop Alamo to carry off the store of goods, late in possession of Stewart Newell & Co., of Galveston?

6th. How many hands and drays were employed, and at what time of day were the goods taken from said store?

7th. At what time in the night did the sloop Alamo heave off; what was the place of destination, and where were the said goods on her directed to be landed?

8th. To whom were they consigned, and by whom?

MERRIMAN, ALLEN,
SHERWOOD & WAGNER,
Solicitors, and of counsel for complainants.

And thereafter, on the twelfth day of July, A. D. 1848, a subpœna was issued in due form out of said court, in the words and of the tenor following, to wit:

UNITED STATES OF AMERICA, *district of Texas.*

The President of the United States of America, to Stephen W. Doss and Stewart Newell, greeting:

You are hereby commanded to appear personally before the honorable the United States district court, exercising the powers and jurisdiction of a circuit court of the United States, at a court to be holden in the city of Galveston, in and for said district, on the first Monday of August next, or whensoever the said court shall there be, to answer a bill exhibited against you by William Tyack and Lindley Murray; and to do further and receive what the said court shall have considered in that behalf.

And this you are not to omit, under the penalty of two hundred and fifty dollars.

Witness the honorable John C. Watrous, judge of said court, and seal of court, at the city of Galveston, this 12th day of July, A. D. eighteen hundred and forty-eight, and seventy-third year of the independence of the United States.

THOMAS BATES, *Clerk.*

The defendant is required to enter his appearance in the above suit in the clerk's office, on or before the first Monday of August next, otherwise the bill will be taken as confessed.

THOMAS BATES, *Clerk.*

Upon which subpœna the complainants, by their counsel, have entered the following notice of application for an injunction, to wit:

UNITED STATES' DISTRICT COURT,
District of Texas.

WILLIAM TYACK and Lindley Murray, complainants,
vs.
STEWART NEWELL and Stephen W. Doss, defendants.

Take notice, that an application for an injunction will be made to this honorable court in the above entitled cause, on the morning of the second court day after the service of this notice, or a copy thereof, on the said above named defendants, or either of them. Dated July 12th, 1848.

To the above named defendants.

F. H. MERRIMAN, E. ALLEN,
L. SHERWOOD & H. W. WAGNER,
Solicitors, and of counsel for complainants.

And upon which subpœna is the following endorsement of service, to wit:

Received 12th day of July, 1848, and executed the 15th day of July, 1848, by serving Stewart Newell, in person, with a true copy of this subpœna.

JAMES H. COCKE, *marshal*,
By SAMUEL HINTON, *Dep. Marshal.*

And upon the same day, to wit, on the twelfth day of July, A. D. 1848, a subpœna was issued in due form from said court, in words and figures as follows, to wit:

UNITED STATES OF AMERICA,
District of Texas.

The President of the United States of America, to Stephen W. Doss, greeting:

You are hereby commanded to appear personally before the honorable the United States' district court, exercising the powers and jurisdiction of a circuit court of the United States, at a court to be holden in the city of Galveston, in and for said district, on the first Monday of August next, or whensoever the said court shall there be, to answer a bill exhibited against you by William Tyack and Lindley Murray; and to do further and to receive what the said court shall have considered in that behalf.

And this you are not to omit under the penalty of two hundred and fifty dollars.

Witness the honorable John C. Watrous, judge of said court, and seal of court, at the city of Galveston, this 12th day of July, A. D. eighteen hundred and forty-eight, and seventy-third year of the independence of the United States.

THOS. BATES, *Clerk.*

The defendant is required to enter his appearance in the above suit in the clerk's office, on or before the first Monday of August next, otherwise the bill will be taken as confessed.

THOS. BATES, *Clerk.*

Upon which subpœna the complainants, by their counsel, have entered the following notice of application for an injunction, to wit:

UNITED STATES DISTRICT COURT,
District of Texas.

WILLIAM TYACK and Lindley Murray, complainants,
vs.
STEWART NEWELL and Stephen W. Doss, defendants.

Take notice, that an application for an injunction will be made to this honorable court in the above entitled cause, on the morning of the second court day after the service of this notice, or a copy thereof,

on the said above named defendants or either of them. Dated July 12, 1848.

F. H. MERRIMAN, E. ALLEN,
L. SHERWOOD, & H. W. WAGNER,
Sols. and of counsel for complainants.

To the above named defendants.

And upon which subpœna is the following endorsement of service, to wit:

Received 12th day of July, 1848, and executed 15th day of July, 1848, by serving defendant in person with a true copy of this subpœna.

JAS. H. COCKE, *Marshal*,
By G. F. LEONARD, *Dy. marshal.*

Whereupon the court made the following order, which order is in the words and figures following, to wit:

It is ordered that the books of S. Newell & Co., in the hands of Peter McGreal or S. W. Doss, be delivered to the clerk of this court.

WATROUS.

And afterwards, on the same day, to wit, on the seventeenth of July, A. D. 1848, the defendant, Stewart Newell, by his counsel, filed the following motion, to wit:

WILLIAM TYACK and Lindley Murray, complainants,
vs.
STEWART NEWELL, defendant. } In equity.

And now, after answer filed by this defendant, the said Stewart Newell, defendant as aforesaid, moves the honorable court, that the order for the appointment of a receiver in said cause heretofore , may be annulled, vacated, and set aside.

J. A. SWETT,
B. C. FRANKLIN,
JOHN B. JONES,
Counsel for deft.

And afterwards, on the 18th day of July, A. D. 1848, the complainants, by their counsel, filed corrections of their amended bill in words and figures as follows, to wit:

UNITED STATES DISTRICT COURT,
District of Texas.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss. } In equity.

Corrections of the amendments to the plaintiffs' bill of complaint.

As to the 3d amendment on file, instead of saying "strike out all on the 10th page," say strike out all on the 11th, &c.

As to the 4th, 5th, 6th, 7th, and 8th, amendments, instead of saying "on page 11th," say on page 12th.

As to the 9th, 10th, 11th, and 12th amendments, instead of saying *on* "on page 12th," say on page 13th.

On this 17th day of July, A. D. 1848, personally came before me William E. Warren, and being by me duly sworn says, that the foregoing corrections to the amendments of the complainant's bill of complaint in the above cause would make the amended bill read as intended; that in making the amendments on file a miscount of the pages led to an error; and further, that the amended bill as corrected by the above is true to the best of his knowledge and belief.

W. E. WARREN.

Sworn and subscribed before me, this 17th day of July, A. D. 1848.

A. M. HUGHES, *Com'r.*

And afterwards, to wit, on the 18th day of July, Stewart Newell, one of the defendants in this cause, by his counsel, entered his appearance in the words and figures following, to wit:

TYACK et al
vs.
NEWELL et al.

This day J. A. Swett, B. C. Franklin, and John B. Jones enter an appearance for defendant, Newell, July 18th, 1848.

THOS. BATES, *Clerk.*

And on the same day, that is to say, on the 18th day of July, A. D. 1848, S. W. Doss, by his counsel, entered his appearance as a defendant in this cause in the words and figures following:

W. TYACK et al.
vs.
S. NEWELL et al.

Messrs. Thompson & Johnson enter their appearance for defendant, Doss.

THOS. BATES, *Clerk.*

And afterwards, to wit, on the seventeenth day of July, A. D. 1848, N. B. Yard, the receiver heretofore appointed in this cause, submitted his report, which was put upon the files, and is in words and figures as follows, to wit:

UNITED STATES DISTRICT COURT,
District of Texas.

WILLIAM TYACK and LINDLEY MURRAY
vs.
STEWART NEWELL and STEPHEN W. DOSS. (In equity.)

Personally appeared before me, on this 17th day of July, A. D. 1848,

N. B. Yard, the receiver appointed in this cause by the master in chancery, on an order of reference to him for that purpose made and obtained, and being duly sworn, says, that on Saturday morning last, the 15th of July instant, he, as receiver in this cause, called on Stewart Newell, one of the above named defendants, and demanded of him the notes, books of account, choses in action, and evidences of debt, and property belonging to the firm of "Stewart Newell & Co.;" that said deponent made such demand as receiver in the said cause; that said Newell in reply denied that he had any matters belonging to said firm in his possession or under his control, but stated he had delivered up all the account books of the firm to one Peter McGreal, and that McGreal had them in his possession; that afterwards, on the morning of the 17th of July instant, deponent called on said McGreal, and demanded the said account books of the said firm of "Stewart Newell & Co.," and which said McGreal refused to deliver up on the pretence that they were the property of Stephen W. Doss, and that said demand was made by this deponent on said McGreal as receiver in this cause. And deponent further says, he is informed that the said books contain an account of the invoices and sales of the said goods of the firm of "Stewart Newell & Co.," and are the exclusive property of the said firm, and that it is entirely and absolutely necessary that this deponent should have access to said books or book, in order to the correct discharge of his duty as receiver in the said cause; and deponent asks the court for an order to compel the said Peter McGreal to deliver up to him all books, notes, vouchers, memorandums, or inventories belonging to the late firm of "Stewart Newell & Co.," or to deposit the same with the clerk of this court, when deponent can have access to the same, or that he be required to shew cause at such time as directed by the court.

N. B. YARD.

Sworn and subscribed before me this 17th day of July, A. D. 1848.

JOHN C. WATROUS,
U. S. Judge.

And afterwards, on the same day, to wit, on the 17th day of July, the complainants, by their counsel, entered the following motion, to wit:

WILLIAM TYACK and LINDLEY MURRAY
vs.
STEWART NEWELL and STEPHEN W. DOSS.

It appearing that N. B. Yard has been appointed a receiver in the above entitled cause of all and singular the goods, chattels, and credits, debts, choses in action, and property of the firm of Stewart Newell & Co., in controversy in the above entitled cause, and it appearing that the books of account, invoices, and memorandums belonging to the said firm of Stewart Newell & Co. are now in the possession and un-

der the control of one Peter MacGreal, and that the same have been demanded of the said MacGreal, and that he has refused to deliver the same to the said receiver on such demand, and it appearing that the said books of account, invoices, and memorandums are necessary to be had by the said receiver to enable him to discharge his duties:

It is therefore moved, that the said Peter MacGreal be attached for a contempt of this court for refusing to deliver up to the receiver aforesaid the books, invoices, [and] memorandums of the goods, chattels, and credits of said Stewart Newell & Co. in his possession or under his control, unless he personally appear on a day to be set, and shew good cause to the contrary.

MERRIMAN, ALLEN, SHERWOOD & WAGNER,
Solicitors, of counsel for complainants.

July 17, 1848.

And afterwards, to wit, on the fourteenth day of July, A. D. 1848, Stephen W. Doss, by his solicitors, filed his petition, in the words and figures as follows, to wit:

In the United States district court, in and for the district and State of Texas.

TYACK and MURRAY
vs.
STEWART NEWELL and Stephen W. Doss. } In chancery.

In this case comes Stephen W. Doss, by his solicitors, A. P. Thompson and Ovid F. Johnson, esquires, and complaining to the court, respectfully represents:

That since the filing of his complaint heretofore filed, Mr. N. B. Yard, the receiver appointed in said cause to take charge of the effects of Stewart Newell, or Stewart Newell & Co., did, on or about the 12th day of July, 1848, under color and pretext of his authority as said receiver, illegally take into his possession a large amount of merchandise, the property of this complainant, which property was then on board the sloop Alamo, lying in the Brazos river, consigned to this complainant at Brazoria; and did, contrary to law, and under pretext of his said authority, change the destination of said vessel and merchandise, and brought the same to Galveston, where he still, as said receiver, detains said merchandise in his custody. That all this was done without any notice to this defendant. That the said receiver did not insure the said merchandise from the Brazos river to Galveston against the dangers of the seas, nor give notice to this defendant, so that himself might insure.

In consideration of all which this complainant prays that your honor will, upon hearing and proof of the facts herein alleged, order the said receiver to restore the said merchandise to the possession of this defendant.

A. P. THOMPSON,
O. F. JOHNSON.

And afterwards, to wit, on the eighteenth day of July, 1848, Stephen W. Doss, one of the defendants in this cause, filed his answer in the words and of the tenor following, to wit:

In the United States district court, in and for the district of Texas, in chancery.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss.

The separate answer of Stephen W. Doss, one of the defendants to the bill and amended bill of complaint of William Tyack and Lindley Murray, complainants, taken at the city of Galveston in open court, the 18th day of July, 1848:

The said defendant, now and at all times hereafter, saving and reserving to himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' said amended bill of complaint, for answer thereto, or unto so much, and such part or parts thereof, as this defendant is advised is or are material or necessary for him to answer unto, this defendant answering, says:

That he denies all and singular the allegations contained in said complainants' amended bill, which charges this defendant with combining and confederating with the other defendant, Stewart Newell, or with any other person or individuals; and denies that, at the time, or at the time of filing said bill, or at any other time, he has engaged in the manner, or with the persons described in said bill, in making a fraudulent disposition of the said copartnership property, by way of any pretended transfer of the store of goods belonging to the said firm of Stewart Newell & Co., or any part thereof. He further denies, that any sham sale, done with the intent to place the said co-partnership property beyond the reach of process, or to prevent any remedy of the said complainants against the said copartnership property, has ever been made or entered into between this defendant and the said Newell, or any other persons. He further denies, that, in conjunction with the said Stewart Newell, or with any other persons, apprehending some legal process on the part and on the behalf of the complainants to place the said copartnership property in the custody of the law, he was engaged, at the time of filing said bill, or said amended bill, or at any other time, either by himself, his agents, or servants, or any evil-disposed persons, in scattering, or secreting, or running off the said property from the said store of Stewart Newell & Co., in the city of Galveston, to prevent the same from being reached by process. He further denies, that he acted in conjunction with Stewart Newell in the employment of a large number of irresponsible hands to remove the said goods in the night time. He further denies, that, in conjunction with Stewart Newell, he was engaged at any time of the filing of said bill, or said amended bill, or at any other time, in placing the large

bulk of the said store of goods on board of the sloop Alamo, to be sent on the night of filing said bill, or at any other time, out of the port of Galveston, to parts unknown, or out of the jurisdiction of this court; that so far as relates to the proceedings in the district court of the first judicial district of the State of Texas, described in said amended bill, this defendant is informed, and believes, that the same are therein correctly set forth, so far as stated; but he is informed, and believes, that the same are not fully set forth in said amended bill, and prays that they be referred to in full and in detail, as they exist on the records of said court, as part of this answer, and as evidence in this cause. But this defendant denies that, while said matters were so pending in the district court, he became and was fully apprised of the nature of the case, that the property in controversy was partnership property, or that he had due and full notice of the interests of complainants. He further denies, that, in advance of a decision of the said court, releasing the said copartnership property from the custody of the sheriff, he fraudulently made an arrangement with the defendant, Newell, to assist the said Newell run off the said property as soon as the same should be released by any order of the said district court. He further denies, that, on the 10th day of July, 1848, immediately after the order of said district court releasing the said property from the custody of said sheriff, or at any other time, he, in conjunction with the said Newell, or with any other person, fraudulently commenced any proceedings to carry off said property, as is averred and charged in said bill and amended bill of complaints. And the said defendant further denies, that the allegation in said amended bill, that this defendant is not a merchant, but a cooper by trade, is true; but, on the contrary, alleges that he has been for many years engaged in mercantile business, and is well versed in the trade of merchandise, and admits that he has recently, and he now, carries on a cooperage business in Brazoria county, and has dealt largely in the purchase and sale of real estate and negroes. He admits that he is the brother-in-law of Peter MacGreal, esqr., and that the said Peter MacGreal, acting under the authority of this defendant, purchased for him and on his account the said goods of the house of Stewart Newell & Co., and he is informed, and believes, took possession of the same and shipped a large portion thereof to this defendant per sloop Alamo, bound for Brazoria from Galveston, to the consignment of this defendant. He further denies, that the said MacGreal was the real principal in said transaction. He denies that the said transaction was fraudulent. He also denies that the said MacGreal used or uses the name of the said Doss as a cover to the said frauds, as averred and charged in said amended bill, or of any other frauds whatever.

And further answering this defendant says, that how far the said MacGreal had knowledge of the said proceedings in the said district court, and participated in the same, or had any knowledge of the frauds alleged against said Newell, or participated in the same, or assisted in the concoction thereof, as charged in said bill, this defendant has not

been advised, does not know, and cannot state; but he believes that the said charges and allegations are unfounded and untrue, and requires strict proof of the same. And this defendant further denies that there was any pretended or sham consideration whatever for any pretended sale of said goods, or any pretended transfer of land titles, standing in the name of the said defendant, or of the said Peter MacGreal, was made to operate as a more effectual cover to the said fraudulent transactions charged in said amended bill, or merely intended in any way to embarrass, hinder, or delay the said complainants, or in any way to harass or defeat them in establishing their just rights, as charged in the said amended bill. And the said defendant expressly denies, that there is in his hands, or ever has been, any property whatever belonging to Stewart Newell & Co., or to Stewart Newell, or the said complainants. He denies that the appointment of a receiver is or was in any way necessary. He states that he, this defendant, is fully solvent, and able to meet any and every liability which the complainants or others may have against him, and that the appointment of said receiver, and his proceedings under color of such appointment, is a great damage and oppression of this defendant, for redress of which he insists that he is entitled to the interposition of this honorable court in the manner hereafter prayed for.

This defendant further answering says, that, in fact and truth, he purchased on the 10th day of July, 1848, the stock of goods, wares, and merchandise belonging to the house of Stewart Newell & Co., in the city of Galveston; that he purchased through his agent, Peter MacGreal, esqr., for the sum of eleven thousand seven hundred fifty-three dollars, payable in the following manner: Two thousand dollars cash down, two thousand dollars in good notes, mortgages, liens, and judgments due now, or to fall due before the 1st of January next, with guarantee to deliver and assign the same in thirty days, and further guarantee of the payment of the same; seven thousand seven hundred fifty-three dollars in good, valuable marketable lands, lying, situate, and described as follows:

Six hundred acres of land in the county of Brazoria, about eight miles from the town of Brazoria, on the west side of the San Bernard river, part of J. Delany's head right, for three dollars per acre; half a league of land on the Navisoto river, in Brasos county, part of Maria Kiggins head-right league, for one dollar; half a league on the Navidad river, in Colorado district, being half of the league granted to John D. Ragdale, for one dollar per acre; twelve hundred and eighty acres patented land in Bexar county, granted to Peter MacGreal, for fifty cents per acre; one hundred and seventy-seven acres of land in the town of Houston, Harris county, about one mile from the old capital, for five dollars per acre; for all of which lands good warranty deeds were to be made, transferring the title to the said Newell or assigns within thirty days from the said 10th day of July; that the price paid for said goods was a large advance; that the said stock of goods was estimated at its full value in said purchase; and that the said con-

sideration paid therefor was fair, adequate, and in good faith; the said sum of two thousand dollars has been fully paid and satisfied by this defendant; that the assignment of the notes, liens, and mortgages, amounting to two thousand dollars, he has given a written assignable obligation of Peter MacGreal, esq., to execute and deliver in thirty days from said 10th day of July; that the titles to said lands he has given the like assignable obligation to make pass and deliver within thirty days according to the tenor and effect of said contract of sale and purchase; that he has complied with said contract in good faith, so far as the same has become due and payable, and stands ready to execute the same in every respect according to the tenor and effect thereof, and the decrees and orders of this honorable court; that the said purchase was made in perfect good faith on the part of this defendant, and of the said Peter MacGreal, esqr., his agent, and the possession of the said goods, wares, and merchandise was then and there delivered by the said Stewart Newell & Co. to the said Peter MacGreal for account of this defendant; that the said transaction was made in the regular mode of conducting such business, and at a time when there was no lawful restraint existing to prevent the sale and delivery of said goods by said Stewart Newell & Co., so far as this defendant is advised or believes; that with regard to the allegations in said amended bill of complaint relative to the insolvency of the firm of Stewart Newell & Co., of Galveston, and Wm. Tyack & Co., of New York, and with regard to the allegations that there were or are outstanding liabilities of said firm or firms unsatisfied, this defendant neither knew at the time of said sale, nor does he now know, any thing relative thereto; he says that if the said firms, or either of them, were or are insolvent, or whether they had or have, or either had or has, any outstanding liabilities, this defendant was and is utterly ignorant thereof; he further states said sale was absolute to this defendant, and that no interest whatever in the goods, wares, and merchandise, bought as aforesaid, is reserved or held in favor of said Stewart Newell, or Stewart Newell & Co., or any other person whatever; and that the consideration of said sale has absolutely and without reserve passed out of this defendant in manner as above now alleged by him; this defendant further states, that as he is informed, and believes, by his agent, the said Peter MacGreal, esquire, shortly after the delivery of said goods to him, the said MacGreal commenced the shipment of the same on board the sloop Alamo, bound from Galveston to Brazoria, consigned to this defendant, and that the said goods were so purchased by this defendant for the market of Brazoria, to be resold there in the ordinary course of commerce; that the said Brazoria is with the jurisdiction of this honorable court; that as he is so informed, and believes, the said shipment was commenced at about half past two o'clock, p. m., on the said 10th day of July, and continued until ten o'clock; that the said shipment was made openly, publicly, with the assistance of a great many disinterested persons, and without any secret, or fraud, or intent to deceive, mislead, or defraud.

That the said Alamo is a regular trader between Galveston and Bra-

zoria, and that her destination with the said goods was open, public, declared, and easily ascertainable by any body; that it is true that said vessel sailed in the night as soon as her cargo was secured aboard; but this deponent denies that either himself or his said agent had any intention whatever, by said sailing in the night, to defraud said complainants or any body else, or to remove said goods beyond the jurisdiction or process of this honorable court. That the receiver appointed at the instance of said complainants in said cause, after the said property had been as aforesaid delivered to this defendant, took possession of the same, forcibly, illegally, and in violation of the rights of this defendant, in manner as stated in his two complaints heretofore filed, and still retains in his hands said illegal possession [of] the said goods, notwithstanding he has been amicably requested to restore the same to the possession of this defendant. This defendant, therefore, prays the court to order that the said receiver forthwith restore said goods, wares, and merchandise to this defendant, and that he [be] hence dismissed without day, and with his costs herein most wrongfully incurred. To the interrogatories specially addressed to this defendant, in said amended bill, he makes answer:

To the 1st interrogatory he says: I have not been in the city of Galveston for several months. The purchase of the goods made by me as mentioned in my foregoing answer, was made for me by my agent Peter MacGreal, esq., whom I fully authorized to that effect by letter of attorney, and whose proceedings I ratify and confirm. Said MacGreal has heretofore acted as my agent in large business transactions.

To the 2d interrogatory he says: He did not come to Galveston at all, or at any one's solicitation or suggestion. I was desirous to purchase goods for the Brazoria market, and had requested Mr. McGreal to avail for me of opportunities to do so while he was at Galveston. He informed me of an opportunity to purchase of Newell & Co., and I authorized him to do so, in his best judgment and discretion.

To the 3d interrogatory he says: I am a brother-in-law of Peter MacGreal, esq'r.

To the 4th interrogatory: I have for many years been trading generally in merchandise, in the purchase and sale of real estate, and negroes; and I have recently commenced, and now carry on, a cooperage business. I can command capital for the trade of merchandise, or any other business I see fit to engage in.

To the 5th interrogatory: Peter MacGreal, esq'r, informs me, that he, with the assistance of Mr. Lawrence Frosh, engaged the sloop Alamo for the purpose of conveying to me the merchandise purchased as aforesaid.

To the 6th interrogatory: As Mr. MacGreal informs me, five white men and six or seven negroes, five or six drays. He also informs me that they commenced taking the goods aboard at ½ past 2 or 3 o'clock p. m., and completed the cargo at ½ past 9 or 10 o'clock, p. m., on the evening of the 10th of July, instant.

To the 7th interrogatory: As I am informed by Mr. MacGreal, she

left as soon as her lading was fully completed, as stated in the foregoing answer. Her destination was Brazoria, and the goods on board of her directed to be landed at that place. I had instructed Mr. MacGreal, if he purchased, to lose no time in shipping to me.

To the 8th interrogatory: They were consigned to me by Mr. MacGreal.

And this defendant denies all and all manner of fraud and collusion, and unlawful combination, and confederation, wherewith he is charged by said amended bill of complaint. And denies all fraud, and says, that if there is any thing charged in the said bill which it was necessary for him to make answer unto, and which he has not fully answered, he is ready to further answer thereunto, if the court shall judge it necessary or material. And all the facts affirmatively stated by him he is ready to aver, maintain, and prove, as this honorable court shall direct; and not admitting any matter or thing charged in said bill, not herein expressly admitted, prays to be hence dismissed, with his costs, and charges, and damages in this behalf most wrongfully sustained, and that his said merchandise be restored to him, and for such other and further relief as to his case the court may be able to extend.

STEPHEN W. DOSS,
A. P. THOMPSON,
Solicitor and of counsel for defendant.
O. F. JOHNSON,
Solicitor and of counsel for defendant.

The United States district court, in and for the district of Texas, in chancery.

Between WM. TYACK and Lindley Murray, complainants,
and
STEWART NEWELL and Stephen W. Doss, defendants.

In this case, comes in person Stephen W. Doss, one of the defendants, and upon oath says, that he has carefully read over the foregoing answer, and that the matters and facts therein set forth, which are stated as of his own knowledge, are true in substance and effect; and that those matters and facts therein which are stated from the information of others, he believes to be true in like manner.

STEPHEN W. DOSS.

Sworn to and subscribed before me, this 18th July, 1848.
JOHN C. WATROUS,
U. S. judge.

And afterwards, on the same day, to wit, on the eighteenth day of

July, A. D. 1848, Stewart Newell, one of the defendants in this cause, filed his separate answer in the words and of the tenor following, to wit:

In the district court of the United States, in and for the district and State of Texas.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss. } In equity.

The separate answer of Stewart Newell, one of the defendants to the bill and amended bill of complaint of William Tyack and Lindley Murray, complainants, taken in open court at Galveston, this seventeenth day of July, A. D. 1848.

This defendant, now and at all times hereafter, saving and reserving to himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' said amended bill of complaint contained, for answer thereunto, or unto so much and such part or parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant answering says:

This defendant admits that the said contract of copartnership exhibited in said bill of complaint was duly entered into by himself and the said complainants; and that the house or firm of Stewart Newell & Co. was opened at Galveston under said articles of copartnership; he refers to the tenth article in said contract of copartnership for the mode specially provided for the settlement of any difficulties or disputes that might arise between himself and his said co-partners; and states that this defendant has always been, and now remains, ready to comply with the terms of said tenth article, and to submit all matters in difference to reference as therein provided; but that the said complainants have at no time proposed to settle said difficulties and disputes in the manner therein specified. Therefore this defendant respectfully insists that this honorable court cannot take further cognizance of the said bill of complaint.

This defendant further answering denies that, at the time of the negotiation for the formation of said copartnership with the said complainants, he held himself out to be a man of sufficient means and capital to pay down in cash the five thousand dollars mentioned in said agreement as an instalment to be advanced by him; he also denies that he made *and* false or fraudulent representation to complainants as to his ability to advance said five thousand dollars, or to control any considerable amount of profitable business; he also denies that, at the time of entering into said articles of co-partnership, he was insolvent or unable to pay his debts; he also denies that said complainants were induced to enter into said articles of co-partnership by any false or fraudulent representation with regard to his means or influence, or any false representation whatever; on the contrary, he states that the said

complainants were fully apprised and informed by this defendant of his real resources and condition, and entered into said co-partnership with full knowledge thereof; his resources and condition as known to complainants were at that time as he now proceeds to state.

This defendant had resided many years in Texas; had been engaged in business; had extensive business connexions and acquaintances; and had for a portion of the time held the appointment of United States consul in Texas. During said residence he had become interested in a claim belonging to Alexander Edgar, who is named in the bill of complainants, to the league of land on which the city of Galveston is built, to establish which claim a suit had been brought, and is still pending. The said claim had been divided into three parts or portions; one-third of which had been disposed of by this defendant for said Edgar, in New Orleans, for a large sum of money, which has been paid over to said Edgar; another third had passed into the hands of divers individuals, a portion, or interest in which, still belongs to this defendant. The remaining third was the sole property of the said Alexander Edgar, with whom this defendant made an arrangement to sell the same for him, the said Edgar agreeing out of the proceeds of said sale, first, to pay all the expenses incurred; second, to pay this defendant one equal half of all that he could realize for said claim over the sum of twenty thousand dollars.

This defendant, as had been understood between him and said Edgar, proceeded to the North to effect such sale, with a full power of attorney from said Edgar to do so, according to his judgment and discretion. This defendant divided the said claim into stock, consisting of one thousand shares, valued at one hundred dollars per share. After devoting nearly two years and a half, with great trouble, labor, and expense, to dispose of said stock, he succeeded in forming an association, to the members of which, wealthy and respectable persons, residing chiefly in New Nork and Boston, he sold one hundred and forty-nine shares, to be paid for at the rate of one hundred dollars each share, in cash, as follows: One-third down, and the remaining two-thirds in monthly instalments of ten dollars per share, till the whole was paid in. The said William Tyack was and is the treasurer of the said association, and the holder of forty shares of said stock, ten of which forty shares had been given to him for his services as treasurer and director, and thirty of said shares were purchased and to be paid for by him. The other complainant, Lindley Murray, purchased ten shares of said stock. This defendant, by virtue of his authority from said Edgar, and for himself, for his own interest therein, authorized the said Tyack to receive the moneys due, and to fall due, from the subscribers to said stock, and to sell other shares. A portion of the moneys due for said stock, to wit, about $5,000, was paid in before this defendant left New York; for which last named sum the said defendant has fully accounted to the said Edgar. The balance, to wit, between eleven and twelve thousand dollars, it was confidently expected and believed by the said complainants and this defendant, would be promptly paid in

to the said William Tyack, at the monthly rate of about fifteen hundred dollars a month. How much of said moneys has been received by said Tyack he does not know, except that said Tyack acknowledged by letter the receipt of about ($635) six hundred and thirty-five dollars; and this defendant has strong reason to believe, and does believe, and expressly charges, that other and larger sums have been received on the same account by the said Tyack, but no account of the same has been rendered by said Tyack to this defendant. This defendant further states, that, in addition to the foregoing stock, and claims for money for sales of stock, left as aforesaid in the hands of said Tyack, he also placed in the hands of said Tyack five shares in another assosociation or joint stock company, generally known as the "Wilson Joint Stock Land Company," [which] own or claim a very large amount of lands, chiefly in the State of Louisiana, which said five shares were rated at five thousand dollars a share. This defendant states, that like shares of five thousand dollars in said Wilson company had previously been sold for six thousand dollars cash; and for the said five shares so deposited with said Tyack this defendant had been offered, a very short time previous, one thousand dollars cash per share, and refused the same; that he deposited said five shares, which were the sole property of this defendant, with the said Tyack, with instructions and authority to sell and dispose of the same, if any emergency should arrive to render such sale necessary to meet the liabilities of the firm; the said Tyack well knowing that this defendant had declined an offer of one thousand dollars cash per share for the same. This defendant further states, that about three months ago he, by letter, demanded of said Tyack to account for said five shares, or return them to this defendant if they were not disposed of; but said Tyack has neglected to render any account of said five shares, or to return the same. And this defendant has strong reason to believe, and verily believes, and expressly charges, that the said Tyack and Murray, or the said Tyack, have sold or otherwise disposed of said five shares, for a large amount, without rendering any account whatever of the same to this defendant. In addition to the foregoing resources, this defendant owned other considerable amounts of property, and owed no debts which he was unable to pay, and now owes nothing considerable, except what liabilities he may be under on account of said co-partnership. These facts, as above stated, are true, and were made known to the complainants, and were the only inducement held out by this defendant for the formation of said co-partnership.

This defendant further answering denies that said Tyack paid in five thousand dollars in cash as his share of said capital, and says that if ever by letter he acknowledged the same to have been paid in, this defendant was under a misapprehension at the time of writing said letter, arising from misrepresentations of said Tyack; that he is informed by letter, from the said Lindley Murray, who was book-keeper of the firm at New York, that the said Tyack has paid in only about two thousand three hundred dollars. He further denies that five thou-

sand dollars, advanced by said Tyack, have been employed in the purchase of goods, paying freight charges, &c., for Stewart Newell & Co., as charged in said bill of complaint; but, as above stated, says that the advance made by said Tyack was only about twenty-three hundred dollars.

This defendant further answering denies that the amount of goods purchased in the city of New York for said co-partnership amounted to seventeen or eighteen thousand dollars; but, on the contrary, states the whole amount of goods purchased by said co-partnership, including purchases made by this defendant in New Orleans, amounted only to sixteen thousand three hundred and twelve dollars and thirty cents, or thereabouts. This defendant denies that so much as fourteen thousand seven hundred [and] eighty-six dollars [and] forty-seven cents were purchased on a credit, but admits that about thirteen thousand dollars worth were purchased on the joint credit of complainants and this defendant, which were paid for by bills drawn as stated in the said bill of complainants. This defendant further denies that the whole cost of said goods, at invoice prices, at the city of Galveston, with freight charges and incidental expenses, amounted to near nineteen thousand dollars, but states that the said stock, with costs and charges, amounted to only about seventeen thousand five hundred dollars.

This defendant further denies that the amount now due by the complainants or this defendant, for said purchases, is now fifteen thousand dollars; and refers to answer to preceding charge for explanation; and as to how much thereof is now due, this defendant is ignorant.

This defendant admits that the house of Stewart Newall & Co. was opened at Galveston early in January, 1848, and sales commenced by him about the 15th of last January, and continued until the store was closed up by a process from the district court of the first judicial district of the State of Texas. He denies that his sales during the time the said business was in operation amounted to nine thousand two hundred dollars, or near that amount, as charged in said bill, but admits that the sales amounted in gross to about seven thousand three hundred dollars, only about five thousand dollars worth of the original stock being used to effect said sales; and defendant further states, that if he made any such statement of sales to the said agent, as stated in said bill of complaint, or furnished any written memorandum to such effect as charged in said bill, which he neither denies nor admits, but requires proof of the same, the said statement and memorandum were made under an erroneous view of the subject without a full knowledge of the facts, and without a thorough examination of the books on the part of this defendant, and the same were made under an impression at the time of the correctness thereof, and without any intention to mislead. This defendant admits that he remitted eighteen bales of cotton and thirty barrels of molasses, but he denies that the value of the same was only about seven hundred and fifty dollars, as charged in bill of complaint, but on the contrary states that the true value of the same was about eight hundred dollars cost price. He further states that, as he is informed and

believes, and so he expressly charges, the said complainant received in New York, on account of the firm of Stewart Newell & Co. the sum of eight hundred [and] fifty dollars from the insurers for damages to the said goods outwards from New York to Galveston, as also the above mentioned sum of six hundred and thirty-five dollars, which they acknowledge by letter to have been so received on payment of said Galveston city stock, and also other larger amounts which he believes and charges the said complainants have received as above mentioned, and for which they have in no way accounted. This defendant further alleges and charges, that out of said sales he not only made said remittances, but also paid and expended about twelve hundred dollars for necessary expenses of storage, clerk hire, drayage, labor, rent, &c.

This defendant further answering denies that he has at any time falsely or fraudulently held out or pretended that he had laid out in the city of New Orleans the sum of five thousand dollars, as charged against him in said bill. He states that the said complainant, Tyack, wrote to this defendant that he, Tyack, had represented to the creditors at New York that this defendant had laid out said sum in New Orleans as his share of said capital, but that said representation of said Tyack was made without any authority from this defendant, the said Tyack and the said Murray well knowing that the resources of this defendant to raise said sum of five thousand dollars were as above stated, and in the hands of said Tyack.

This defendant further answering denies that, instead of a correct monthly statement of his transactions, he has falsely or fraudulently represented or pretended to said complainants, that he had sold but a small portion of said goods, or made any other false or fraudulent pretences or representations whatever to said complainants, as charged against him. He admits that he represented to them that he sold for cash only, or staple products of cash value, but denies that said representations were false or fraudulent, and alleges on the contrary they were strictly true.

He states that if ever he represented that eighteen thousand dollars worth of stock was on hand, of which he has no recollection, and neither admits nor denies the same, but requires strict proof thereof, the said representation was made in good faith on his part, and at the time he made it believed by him to be correct. But that such statement was erroneous, the amount originally bought of stock being much less than said sum of eighteen thousand dollars, the error, if it occurred at all, arising from the fact that without reference to invoices of purchase or accounts of sales, and without taking stock on hand; this defendant considered the gross original stock at twenty thousand dollars, upon the representation of Mr. Murray, one of the said complainants, that he had insured for twenty thousand dollars, and knowing at the time such representations, if made at all, *were made*, this defendant had only sold about two thousand dollars worth of stock. He further states that by every mail, which left Galveston for New Orleans, he kept the said complainants advised of all his transactions for said firm at Galveston,

and fully and truly stated to them the condition and prospects of the house. This defendant again denies that he had sold nine thousand dollars worth of said goods, or anything near that amount, or appropriated to his own private use or benefit the proceeds, or any part of the proceeds, of any sales made by him, except that he admits that he has paid some of his necessary family expenses out of the proceeds of said sales. This defendant further, and again, denies that he made any misapplication of the proceeds of said sales as alleged against him. He denies that he was, or is, insolvent, unless the present oppressive proceedings and other vexatious and harassing steps heretofore taken by complainants may render him so; or that he was, or is, unless as aforesaid, unable to account to the complainants or any body else having a right to require an account for all his proceedings and receipts relative to said sales.

This defendant further answering denies and says that he never held out, or pretended to the complainants in said bill, that he had purchased on Trinity river some (320) three hundred and twenty bales of cotton to be paid for in goods in Galveston, out of said stock of goods above mentioned, for consignment to complainants at New York, or made any other false or fraudulent representations whatever relative to any supposed purchase of cotton by him as charged against him in said bill of complaint. This defendant states that it is true that he had made an arrangement with one Thomas MacDonald, who was then building a steamboat on the Trinity river for the agency of said boat, and the consignment of her cargoes to Stewart Newell & Co. at Galveston; that the said MacDonald represented, and this defendant believed, that he could control from three to five hundred bales of cotton, which he promised to consign to Stewart Newell & Co., and that goods would be received in payment for the greater part of said cotton. This defendant, upon the credit of these representations, advanced, and procured others to advance, to said MacDonald goods and funds to finish his boat; that the sudden death of the said MacDonald prevented the accomplishment of the said arrangement; that the amount advanced to said MacDonald has since been paid and accounted for in the books of said firm; that this defendant fully and truly advised the complainants of the above mentioned transaction, and of the failure of its accomplishment, and denies all and singular the allegations in said bill of complaint which charge him with any false, or fraudulent, or unfair representation or proceeding relative to purchases of cotton.

This defendant further answering denies that he has sold or disposed of any amount of said goods for the payment of this defendant's individual debts, as charged against him, except as hereinafter specially admitted; this defendant admits that he sold to said Edgar merchandise amounting to about twenty-three hundred dollars, or thereabouts, but positively denies that the amount of said sale was to be applied to an individual debt due from this defendant to said Edgar; on the contrary, he states and charges, that at the time of said sale this defendant did not owe the said Edgar individually anything, having fully ac-

counted to said Edgar for every sum received for his account, as hereinbefore stated. This defendant further states, that the payment for said goods so sold to said Edgar was to be retained out of the proceeds of the sales of Edgar's interest in Galveston city, hereinbefore stated to come to the hands of the said complainant, Tyack; that the sum of six hundred [and] thirty-five dollars, which, as before mentioned, had been received by said Tyack on account of said proceeds, was by this defendant passed to the credit of said Edgar against said sale of goods; that the balance of the said sale to the said Edgar remains due, and payment thereof would have been enforced by this defendant but for the facts stated above; that both Tyack and Murray, the complainants, were individually indebted for the shares in the said Edgar claim, which they had purchased for their own individual account; and that this defendant was, and is, without advice as to what receipts said Tyack has made for the same account since the receipt of said sum of six hundred [and] thirty-five dollars. This defendant denies that he offered to mortgage to the said Edgar the said store of goods for an individual debt due by this defendant to said Edgar, as charged against him by said complainants. But this defendant states, that the said complainants authorized and requested this defendant to sell to Edgar large amounts of goods, or to take the said Edgar into the said concern at Galveston as a co-partner, said goods so sold on said share in said co-partnership to be paid for by said Edgar by debits against any receipts made or to be made by said Tyack on account of said Galveston city stock. This defendant further states, that he did not deem it prudent to comply with said requests of his said co-partners, but on account of the importance and stress laid upon the necessity of satisfying Edgar by his co-partners, and from motives of justice, he offered to mortgage the said stock of goods to said Edgar; that the said Edgar would not be satisfied unless this defendant made him an actual sale of the said goods, or delivered possession of the same to him with said mortgage, which this defendant refused, and the said Edgar declined the mortgage. This defendant further states that, at the time he offered said mortgage to said Edgar, the season for the sale of any considerable amount of goods had passed by, and this defendant promised said Edgar to sell no more goods after said mortgage was entered into. This defendant's plan was to go to New York and account to his co-partners, ascertaining precisely what was due Edgar, to realize his resources, and obtain an extension of time from the creditors of the said firm; all which he believes and charges he intended, and would have been able to effect, and return in time for the new season, but for the recent and present oppressive proceedings against him. This defendant again denies that he individually owed Edgar one dollar, or that said mortgage was offered for his antecedent debt to Edgar; but, on the contrary, alleges that it was offered to protect Edgar against any receipts by said Tyack, and the sums due severally by Tyack and Murray for their purchases of stock as above mentioned, and for the credit and benefit of the said firm, thereby to prevent said Edgar taking

any steps to stop payment from said subscribers to said Tyack. That this defendant admits that he credited Lewis & Co. on the books of the firm, and charged the same to himself, with the sum of sixty-four dollars, or thereabouts. He states that he owed said Lewis said sum for lumber used in repairing the dwelling-house of this defendant, and for some other trifling and necessary articles for his family use, taken up in the store of said Lewis since this defendant opened said house of Stewart Newell & Co. This defendant denies that he has sold any other large amounts of said goods, not herein expressly admitted to be sold, or misapplied any of the same to the payment of his individual debts, as charged against him.

This defendant denies that he threw into the auction market any considerable amount of goods without necessity, or in fraud, or in violation of his duties as a co-partner in said firm, as charged against him in said complainants' bill. He admits that he sent some goods to Mr. Lynch to be sold at auction, the invoice of which amounted to about two hundred [and] fifty dollars, but states that the circumstances with regard to said auction sales were in truth and in fact as he now proceeds to state, namely: After he had opened the said house of Stewart Newell & Co. at Galveston, and before he had been able to effect any sales, and with full authority from said Tyack, he drew a bill of exchange upon said Tyack for the sum of two hundred dollars; that the said Tyack allowed the said bill to come back protested, notwithstanding said draft was drawn for necessary current expenses of which said Tyack had full advice; that in order to meet and take up the said protested draft, and to protect the credit of the said firm, then in its infancy, this defendant borrowed two hundred dollars of Mr. E. O. Lynch, the said auctioneer; that the partner of said Lynch told this defendant that he could select a small invoice of goods which would probably sell at a profit at auction; that relying on said representation of Lynch's partner, he sent the said quantity of goods selected by said partner to said Lynch's store, to be sold at auction, and out of the proceeds to pay said borrowed money; that this defendant attended said auction sale; that then and there about one-half of said goods were sold at considerable sacrifice; seeing which, this defendant bought in the remainder for Stewart Newell & Co., and paid Mr. Lynch the balance due him.

This defendant denies that, at the time of the filing of this pending bill of complaint, there was any merchandise on hand belonging to Stewart Newell & Co., at the store of Stewart Newell & Co., or elsewhere in the city of Galveston, or State of Texas, inasmuch as he had, previous to the filing of said bill, sold and delivered the entire stock of goods and the said store to one Stephen W. Doss, as will in the subsequent part of this answer be more fully set forth and explained. This defendant admits that, in the forenoon of the tenth day of July instant, the sheriff restored to the possession of this defendant the stock of goods and store of Stewart Newell & Co., which had been seized by *some* virtue of some process issued by the district court of the first judicial district of the State of Texas,

at the instance of these complainants against this defendant, which proceedings are referred to in the said bill of complaint now pending in this court. This defendant admits that the kind and value of said stock of goods will appear by the inventory made out by direction of said sheriff, and that there was included in the same the said consignment of goods on commission worth three hundred dollars or thereabouts. This defendant admits and states, that there remains due to said firm in book accounts about fifteen hundred and eighty dollars, in addition to the balance due by Edgar on the above mentioned sale to him, amounting to about fourteen hundred and sixty-five dollars, and denies that there is anything more due in notes, accounts, books, debts, or other choses in action, belonging to this defendant or to Stewart Newell & Co.; that, with regard to the allegation in said bill of complaint that the assets of Stewart Newell & Co., including the said remittances, could not be made available for the sum of ten thousand dollars, this defendant states that he has been able to sell the portion of the same, which was restored to him by the said sheriff, for the full sum of eleven thousand seven hundred and fifty-three dollars, as will be hereinafter more fully explained.

This defendant further states that, with regard to the allegations in said bill that the said firm or firms are insolvent, that the debts due by said firm cannot be paid from the assets on hand, that the outstanding liabilities cannot be met, this defendant has never received any monthly accounts, or other accounts, on which he can rely, which ought to have been furnished him according to said articles of co-partnership, showing the transactions or liabilities of the said firm of Tyack & Co., at New York, and therefore cannot answer whether the said last named firm is or is not insolvent; that, with regard to the firm of Stewart Newell & Co., this defendant answers that, if the book debts of the firm are collected, and the proceeds of the sale of the stock on hand are properly managed and applied, the same will be more than sufficient to pay all the outstanding debts and liabilities of said last named firm.

This defendant further denies, that his being suffered to continue in possession and have control of the goods, and to manage the affairs of said firm as he hath hitherto done, would at all injure or impoverish the complainants, or do any injustice to said firm, as charged in said bill; but, on the contrary, alleges that he has managed the affairs of said firm prudently, justly, and with a proper regard for the rights of his copartners and of the creditors, and that he intends to continue to act with the utmost regard to the interest of all parties concerned therein, and that he considers himself the most suitable person to collect the debts due to, and to realize the assets of, the said firm for the payment of its liabilities.

This defendant further answering states that, so far as respects the charge in said bill of complaint that he attempted to convert to the payment of his individual debt a demand due said firm by Samuel Maas, of Galveston, he utterly denies the truth of said charge as made,

and states and admits that, on or about the said 28th day of June last, he called at the store of said Samuel Maas, at Galveston, in company with G. B. Scott, a baker, to whom this defendant owes between twenty and thirty dollars for bread recently furnished his family, and requested the clerk of said Maas to furnish said Scott some three or four thousand bricks, and told said clerk that he, this defendant, would be responsible for the same. The clerk, after inquiry, told said Scott and this defendant that Mr. Maas's bricks were all sold, and therefore he could not furnish the same. This defendant admits that at said time the said Maas was in debt to the said firm of S. Newell & Co. in a small amount. This defendant further denies that he made said application to said Maas's clerk in defiance of any interposition on the part of the complainants, William E. Warren, and states that he never knew or heard, until the filing of the bill of complaint, that the said Warren had been interposing in said momentous affair.

This defendant further answering denies, that he has ever made use of the name of said firm, or contemplated or intended to make use of it, to increase the liabilities of the complainants in an unjustifiable manner, or that he has done so, or contemplated or intended to do so, to their prejudice, or that he has involved, or contemplated or attempted or intended to involve, the said complainants in any difficulties whatever, or thereby in any way to injure their property or credit, as charged in said bill.

This defendant further answering denies that the house of Wm. Tyack & Co., at New York, was to exist merely in name, according to said partnership agreement, and also denies that it was not designed for the said firm of Wm. Tyack & Co. to embark in business under said contract until adequate means were received from Stewart Newell & Co., of Galveston. He also denies that all the capital paid in, and to be paid in, was, by any arrangement of said parties, to be put into the concern at Galveston, as charged in said bill; on the contrary, he alleges and charges, that the said house of Tyack & Co., at New York, was to engage actively in business, as much so as the house of Stewart Newell & Co., at Galveston, prout the said articles of co-partnership set forth in said bill of complaint; but whether said N. Y. firm has done any business or not, this defendant does not know.

This defendant further answering freely admits that the said Lindley Murray never paid any portion of the five thousand dollars agreed to be paid by him under said articles of copartnership; and he also admits, that he, himself, has only paid in the amounts in remittances and otherwise as hereinbefore mentioned, together with the further sums of three hundred twelve dollars, paid for a purchase of tobacco for account of the firm in Philadelphia, and about sixty dollars paid by this defendant towards furnishing the office of the said firm at New York, making in the aggregate, the cash paid for the benefit of said firm by this defendant about two thousand six hundred eighty-two dollars thirty-five cents; besides which this defendant claims to be entitled to his proportional share of fifteen hundred dollars allowed for his personal

expenses under said articles of copartnership, which proportional share would amount to about twelve hundred fifty dollars; these last named sums this defendant charges that he has paid and advanced for the benefit of the firm, or is entitled to claim from it, independent of his instalment of five thousand dollars, which was paid or to be paid in the manner described in the foregoing part of this answer; this defendant denies that said complainants require or are entitled in equity to be protected against any fraud or misconduct committed or intended as charged on the part of this defendant; that with regard to the claim of William Tyack to have the said co-partnership dissolved and its affairs go into liquidation, for the reason, among other things, that the capital to be paid in was not paid in by the other parties, this defendant denies that said Tyack has made out, or can make out, any ground for such interposition of this honorable court, and refers to the allegations of said bill and to this answer in support of said denial.

This defendant further answering denies that he has put it out of the power of said complainants to obtain for said goods, or the proceeds thereof, more than one-half of their cost, but on the contrary states that he has been enabled to sell the same in the manner hereinafter described at a considerable advance on their cost; he further denies that said complainants are now or are danger of becoming remediless without the aid or interposition of this honorable court; and further denies that said complainants are entitled to the restraining or other extraordinary process of this court, as prayed for in said bill.

This defendant denies that the complainants have set forth or established any good ground for the appointment of a receiver in the first instance to take possession of the goods or other assets of said firm, and states that said goods have been disposed of by sale as hereinafter particularly set forth, to the great benefit of the said firm and its creditors; and the other assets belonging to said firm this defendant has in his charge and under his control, and that he does not contemplate or intend selling, secreting, transferring, assigning, or disposing of the same to the prejudice of said firm or the creditors thereof; and that he is now and will at all times be ready to account for the same agreeably to law.

This defendant denies all and singular the allegations contained in said complainants' amended bill, which charge this defendant with combining and confederating with the said Stephen W. Doss, or with any other persons or individuals; and denies that, at this time, or at the time of filing said bill, or at any other time, he was engaged in the manner, or with the persons described in said amended bill, in making any fraudulent disposition of the said copartnership property by way of any pretended transfer of the store of goods belonging to the said Stewart Newell & Co., or any part thereof, to the said Stephen W. Doss; he further denies that any sham sale, done with the intent to place the said co-partnership property beyond the reach of process, or to prevent any remedy of the said complainants against the said co-partnership property, has ever been made or entered into between this defendant and the said Stephen W. Doss, or any other persons; he further denies

that, in conjunction with the said Stephen W. Doss, or with any other persons, apprehending some legal process on the part or behalf of the complainants to place the said co-partnership property in the custody of the law, he was engaged, at the time of filing said bill, or said amended bill, or at any other time, either by himself, his agents, or servants, or any evil disposed persons, in scattering, or secreting, or running off the said property from the said store of Stewart Newell & Co., in the city of Galveston, to prevent the same being reached by process; he further denies that he acted in conjunction with Stephen W. Doss in the employment of a large number of irresponsible hands to remove the said goods in the night time; he further denies that, in conjunction with the said Doss, he was engaged at the time of filing said bill, or said amended bill, or at any other time, in placing the large bulk of the said store of goods on board the sloop Alamo, to be sent, on the night of filing said bill, or at any other time, out of the port of Galveston, to parts unknown, or out of the jurisdiction of this court; this defendant further denies any knowledge of the removal, shipment, or other disposition of the said store of goods by the said Doss, or his agent, Peter MacGreal, esq., after the hour of about eleven clock, a. m., on the 10th day of July instant, when this defendant made and consummated the sale of said goods to said Doss, as will be herein presently described, and delivered the custody and possession of the same, and of the said store, to the said agent, and acquitted and discharged himself from all further interest in, or control or care over, said goods and the store in which they were; he further denies that he had any knowledge whatever of the design or intent of the said Doss, or his said agent, to remove said goods from said store, or of what disposition he finally intended to make of the same; this defendant further denies that, in advance of a decision of said court releasing the said copartnership property from the custody of the sheriff, he fraudulently made an arrangement with the said defendant, Doss, to assist the said Doss, or for said Doss to assist him, to run off the said property so soon as the same should be released by an order of the said district court; he further denies that on the 10th day of July, 1848, immediately after the order of the said district court releasing the said property from the custody of said sheriff, or at any other time, he, in conjunction with said Doss, or with any other person, fraudulently commenced any proceedings to carry off said property as is averred and charged in said bill and amended bill of complainants.

This defendant further answering denies that he has ever made any pretended sale for any sham consideration to the said Doss, or to any other person, or for any pretended consideration of land titles standing in the name of said Doss or Peter MacGreal, esq., which are of no present value or unavailable in liquidation of the demands of the creditors of Stewart Newell & Co.; he further denies that any such land titles were taken as a pretended consideration to cover any fraudulent transactions as charged in said bill, or intended in any way to embarrass, hinder, or delay the complainants, or to harrass or defeat them in establishing their just rights.

On the contrary this defendant says, that, in truth and in fact, he did, on the 10th day of July, instant, after the delivery back to his possession by the sheriff of Galveston county, of the store and stock of goods of Stewart Newell & Co., sell the said stock of goods to the said defendant, Stephen W. Doss, for the sum of eleven thousand seven hundred fifty-three dollars, payable in the following manner: Two thousand dollars cash down; two thousand dollars in good notes, mortgages, liens and judgments, due now, or to fall due on or before the first day of January next, to be assigned and delivered to this defendant within thirty days from the said tenth day of July, with a guaranty of the payment of the same satisfactory to this defendant; seven thousand seven hundred fifty-three dollars in good marketable lands, situated, described, and valued as follows: Six hundred acres in Brazoria county, about eight miles from the town of Brazoria, on the west side of the San Bernard, part of J. Delaney's head right, at three dollars per acre; one-half league of land on the Navisoto, in Brazoria county, part of Maria Kiggins' league, at one dollar per acre; one-half league in Colorado district, on the Navidad, being half the league granted to John D. Ragsdale, at one dollar per acre; twelve hundred [and] eighty acres patented land, granted to Peter MacGreal, in Bejar county, at fifty cents per acre; one hundred [and] seventy-seven acres of land in the city of Houston, in Harris county, about a mile from the old capital, at five dollars per acre, with good warranty titles to all said tracts. The conveyances to be completed and delivered in thirty days from said tenth day of July.

This defendant further answering states that the said sale was by him made in perfect good faith, and in pursuance of authority given to him by the said complainants to dispose of the remaining stock of goods on hand in such manner as this defendant might deem best for the interests of all concerned. He denies all allegations of fraud, or confederacy, or combination, or untrustworthiness in making said sale, as charged in said bill; but on the contrary states and *and* alleges that the said sale was the most favorable to the interests of the said co-partners and the creditors of the said firm that could be made; and he further states that, in said sale, he reserved no interest in the said goods or in the proceeds of the sale thereof, either to himself or to any other person, in secret trust or otherwise; and that the said sale was made and the delivery of the said goods and store, to the said Doss, absolute and unconditional was completed prior to the said bill, or amended bill, of complaint being filed, and without any notice or intimation having been given to this defendant that such complaint would be made, or the process therein prayed, or any other process sued out by said complainants against him.

This defendant further states that, when the said original bill of complaint was filed, and the receiver in this case appointed, there was pending in the district court of the first judicial district of the State of Texas a bill of complaint, filed in the name of the said complainants, against this defendant, containing, in substance, the same charges, allegations,

and prayers for relief which are set forth in this present pending bill, and upon which bill there had been by said State court an injunction granted, a receiver appointed, and the goods, books, papers, and store taken out of this defendant's possession; and upon which, on full hearing and argument, the said State court had dissolved the said injunction, set aside the appointment of receiver, and ordered the sheriff to restore to possession of this defendant the said store of goods, books, papers, &c. All of which orders and proceedings took place prior to the filing of this bill here at present pending.

And this defendant insists that the said orders and decrees of the said State court ought to be conclusive upon the rights and liabilities of the said parties; that the present bill is oppressive, against equity, and in violation of law, especially as this defendant has been put to great expense, loss, costs and trouble in defending said suit, and his credit injured thereby.

This defendant alleges and charges that, as he is informed and believes, the said complainants, William Tyack and Lindley Murray, together with a certain William E. Warren, and other persons, residing in New York, claiming to be creditors of the said firms of Tyack & Co. and Newell & Co., have combined and confederated and agreed together, among themselves, to obtain possession of the store of goods lately belonging to and in possession of Stewart Newell & Co., and to remove the same from the city of Galveston to some place or places beyond the jurisdiction of this court, to force the sale of the same at any sacrifice; that they have agreed and promised said Warren to pay him the sum of eight dollars per day, and to defray all his expenses, to be paid out of the proceeds of said forced sale, and to divide the balance between the parties concerned in said combination, in some way unknown to this defendant, and to hold this defendant responsible for the debts of said firm which may remain unpaid after the partnership property has been exhausted, thereby ruining this defendant and involving him in heavy pecuniary difficulties.

And he further states and charges, that the proceedings now pending in this court, and the said proceedings in the said State court, are instituted by said Warren, pretending to represent said complainants, Tyack and Murray, in pursuance of the designs of said combination; and this defendant believes and charges, that it was for the purpose of carrying out the objects of said combination that the said clause in said articles of co-partnership, providing for a settlement, by referees, of any disputes between these parties, has been utterly disregarded by the said complainants.

This defendant positively denies that he owes the said complainants any thing.

This defendant further answering states and charges that, as he is informed and believes, the creditors of the said firms of Wm. Tyack & Co. and Stewart Newell & Co., have released the said Tyack and the said Murray from all liability for the debts of either of said firms.

This defendant again denies all and all manner of combination, and

confederacy, and fraud, with which he is charged by said bill of complaint; and, having fully answered the same, he is ready and willing to aver, maintain, and prove, in such manner as this honorable court shall direct, the matters and facts set forth by him in his foregoing answer; and again denies all and singular the allegations in said bill of complaint not herein expressly admitted. He, therefore, humbly prays that the said order appointing a receiver, heretofore made in this case, be annulled and set aside by the court; that the writ of injunction prayed for be not granted; that the bill of complainants be dismissed, and he be hence discharged, with his reasonable costs in this behalf most wrongfully sustained.

STEWART NEWELL,
J. A. SWETT,
BENJAMIN C. FRANKLIN,
Counsel for respondent.
JOHN B. JONES,
Of counsel for respondent, residing at Galveston.

In the district court of the United States, for the district and State of Texas.

In chancery, between

WILLIAM TYACK and Lindley Murray, complainants,
vs.
STEWART NEWELL and Stephen W. Doss, defendants.

In this case Stewart Newell, one of the defendants, upon oath says, that he has carefully read over the foregoing answer; that the matters and facts stated in his foregoing answer, as of his own knowledge, are true in substance and effect; and those matters and facts stated upon the information of others, he believes to be true in like manner.

STEWART NEWELL.

Sworn to and subscribed before me, the 19th July, 1848.

JOHN C. WATROUS,
United States' judge.

Reference in the foregoing answer of defendants.

List of book debts to firm of Stewart Newell & Co., as taken from books of said firm, and places of residence of said persons.

Maynard & Shaw -	Galveston - -	$93	60
J. G. Hasbrook - -	" - -	64	34
M. Bumgarten - -	" - -	79	61
S. B. Andrews - -	" - -	38	86
S. Maas - - -	" - -	132	50

G. W. Hockley	Galveston	$3 00
F. A. Walley & Co.	"	53 50
S. Kirkland	"	39 03
C. O'Conner	"	31 50
J. Herdman	"	3 00
Bard & Williamson		46 30
J. H. Bennett		9 30
J. Derrick		2 50
E. O. Lynch		10 00
D. Campion		6 45
P. Menard		1 25
J. Stevens		33 63
A. C. Crawford		7 13
J. Ives		1 50
J. H. Sterritt		9 13
A. H. Moore	Galveston	2 00
J. C. Kuhn	"	2 50
W. Hendley & Co.	"	3 00
W. Richardson	"	8 25
J. D. Knight	"	259 79
W. B. Nichols	"	51 24
Stewart & Durnett	"	23 88
Dr. Labadie	"	23 00
Theodore Dorsett	Liberty	16 48
Tryon & Towcey	Cincinnati, Texas	147 08
J. F. Tyson	N. York	2 16
		1,205 53
Alex. Edgar	Galveston	1,450 00
		$2,655 53

Set-offs (if any) not included in the foregoing list of accounts.

Copies of the two contracts or agreements made and delivered on behalf of S. W. Doss to S. Newall & Co:

GALVESTON, *July* 10, 1848.

Thirty days after date I promise to deliver to Stewart Newell, esq., or order, two thousand dollars in good notes, mortgages, liens, or judgments now due, or to fall due on, or to become due, on or before the first day of January, 1849, for value received, guarantied.

$2,000 Signed, PETER MAC GREAL.

THE STATE OF TEXAS,
Galveston county.

I have bargained and sold to Stewart Newell, esq., the following tracts of land, at the prices hereinafter mentioned, viz: 600 acres in

Brazoria county, about 8 miles from Brazoria, on the west side of the San Bernard, part of J. Delany's head right, for $3 per acre. Half a league on the Navasotta, in Brassos county, part of Maria Kiggin's league, for $1 per acre.

Half a league on the Navidad, in Colorado district, being half of the league granted to John D. Ragsdale, for one dollar per acre.

1,280 acres patented land granted to me, in Bexar county, for fifty cents per acre.

177 acres of land in the town of Houston, about a mile from the Capitol, for five dollars per acre, and I to complete the deeds of said lands to the said Newell, or to his heirs or assigns within thirty days, with warrantee titles to the same.

Signed, PETER MAC GREAL.

Galveston, July 10th, 1848.

NEW YORK, *Monday morning*, 2 *a. m.*,
May 8th, 1848.

To S. NEWELL, esq.

MY DEAR SIR: Our creditors will not consent I should send out Mr. Meeks, but they will send Mr. Warren, and if I will agree to that they will stop proceedings against our house until they find how things are at Galveston; and if he, Warren, finds things are all satisfactory to him there, then he will return, and our creditors will give all the time necessary to turn the goods to the best account for all concerned. But if he, Warren, is not satisfied, as he will not be, as the creditors are not, nor can it be expected he will be, as he goes under the worst impressions, and no doubt determined to find all wrong, then he will be instructed to attach and take immediate possession of all the goods, and remove them to N. York, and sell them at any sacrifice; I have no knowledge of your laws there, how far they can go in such cases; so you must do as you think proper and just in the case; I think if you can keep the goods and turn them into cash in a short time, or cotton, and then into cash, we could compromise at 50 cents on the dollar; some of them here, I am informed, said, that if they found things bad with you, they would take that and discharge us; but if they can get the goods they will not do it, I fear; it will be necessary for me to put myself in a position of self-defence and protection from entire sacrifice in such an event, on account of my creditors here; I have not yet signed their papers, but if I do, that will not bind you; so you will do as you think just and proper; if Warren will consent to take 50 cents on the dollar, you raise what you can on the goods, I will help here, and all will be settled; but their instruction is to take the goods first, and then fall upon me for the balance, and if they do not secure them, compromise for 50 cents; I leave all with you to do justice. Draper and Spicer know, and say, there was never so bad a season as this at the South, and getting worse daily; and they as well as others have many such cases; they are of daily occurrence; I will say no more, hoping

this will reach you in time. I am not able to go out to do anything; my health is poor, and I am broken down entirely, and the only consolation is I have no wife or children, but I have some friends that are dear to me.

Farewell; God bless you.

WILLIAM TYACK.

NEW YORK, *May* '48.

TO STEWART NEWELL & CO.

MY DEAR SIR: Our creditors will send out Mr. Warren, as I informed you, to examine into our conduct and management at Galveston, and if they, or he, find all satisfactory, our creditors will extend to any time we may desire; but if we have not acted justly and prudent, then he will take possession of the goods from us; his charge is eight dollars per day and found—$240 the month, and all expenses paid. Mr. Meeks would do the same thing for $50 the month, and found; they will pay half, and make us pay the other; he leaves to-day; I hope you will do all you can to satisfy him. The great complaint is, they charge you had no capital, nor have you paid, unless at Orleans, for groceries, and therefore if you depended on the sale of Galveston stock for your capital it was a fraud, as that was not cash then, nor can it be cash now. They are very severe against you; I have said and done all that is possible in your favor I could; yet it is of no avail; they are determined to go against us; I hope you have got some cotton down; a Mr. Smyth, of Houston, is Doremus & Nixon's friend, and is employed to proceed against you, of which you are aware before this; I am compelled to sign those papers against my will; but if I do not they will break me up here; Mr. Talmadge received your letter yesterday, and Mr. Edgar's; also one from Mr. Franklin, which in my mind is a very singular letter. He does not say anything in favor of Edgar's claim, but on the contrary says his interest, and that of his friends, is in and with the other company, but if he gets from us a large fee in proportion to the claim, he may do something; this looks to me very unfavorable indeed. I have only collected from

$60 00 since you left; I do not think I could sell a share for ten dollars; I see not a ray of hope in sight; all depends upon the report of Warren, which will, I fear, not be favorable, as all their minds are made not to have it so. The most unfavorable in the whole affair is your calling Galveston stock cash, which was not; I was in hopes they would have taken stock for a part, but they will not have it at any price; they think it a fraud. I feel this morning more calm and resigned to my fate than before. I must meet my fate, and abide the consequence of my folly for the very few days I have to live; as soon as they close up there, then for the balance they will fall upon me. I can say no more this fatal day; at 9 o'clock I must sign the fatal paper, and I feel it to be the last I ever will sign. May God bless you, and all your friends, as also Mr. and Mrs. Andrews and family.

WILLIAM TYACK.

STATE OF TEXAS,
County of Galveston.

Stewart Newell, of the city and county of Galveston, being duly sworn, doth depose and say, that on or about the 25th day of May last, one William E. Warren called at the place of business of said Newell, and representing himself as the agent of the creditors of William Tyack & Co., of New York, and of Stewart Newell & Co., of Galveston, and that the said Warren had a full power of attorney from said creditors and Tyack & Co. to call upon this defendant, and to enter into an examination of the business and general affairs of the firm of Stewart Newell & Co., and to make a report of his said examination to said creditors and Tyack & Co., to the end that if, upon his, said Warren's, report being satisfactory, then any extension of time and other facilities required by said Newell & Co., to enable them to carry on their business, and thus meet their engagements, should be granted; and that he, said Warren, was fully authorized to extend the same, and that his acts would bind the creditors and said Tyack & Co. This defendant, feeling a confidence in said representations, and the same being supported by letters received from said Tyack & Co., did not hesitate to exhibit to said Warren the books of account of the firm of said S. Newell & Co., and requested said Warren to examine the same at his leisure, and to go into an examination of the stock of goods then in the store occupied by said S. Newell & Co.; and, after which, to make such report as he might find the state of facts would warrant, then to close up the said store, deposite the key of the same with said Warren or other third person, and that this deponent would proceed to New York with or without said Warren, and lay said report before said creditors and Tyack & Co. for their consideration; if approved of, then obtain and take an extension of time for payment of the liabilities of said S. Newell & Co. If said report was not satisfactory, and the creditors should require it, then to deliver up to said Warren, their agent, all said goods in liquidation of said liabilities; to all of which said Warren tacitly consented, and immediately received the books from said Newell, in which was contained the original entries of goods sold, and said Warren took a written copy of all said entries, and carried off the same; next day after which he, Warren, called upon this deponent, and, in the name of said creditors, and as agent of the same, and of Tyack & Co., did demand of said Newell a surrender of all said goods and merchandise to him, said Warren, to be sold or otherwise disposed of as said Warren might deem best. To this proposition this defendant objected, as in violation of the proper interests of all parties concerned, and contrary to the instructions contained in a written document exhibited by said Warren to this deponent, purporting to be, and shown to him as, authority and instructions from said creditors and Tyack & Co., and more particularly objected to by defendant on the ground that, without an examination of the said stock of goods, it would be impossible to know if the firm of

S. Newell & Co. were able to meet their liabilities or not; after which deponent repeatedly urged upon said Warren the necessity of said examination; but which, and many other propositions of this deponent to so compromise with said Warren as would meet the approbation of the parties represented by him, were all and severally rejected by said Warren. At this time said Warren held in his possession certain letters addressed by said creditors and Tyack & Co. to this deponent, from which said letters this deponent could gather fully what was the desire and intentions of said creditors and Tyack & Co., and which said letters were withheld from this deponent for more than ten days from arrival of said Warren in Galveston, and until after he, Warren, had applied for and obtained an injunction and writ of seizure out of the first judicial district court of Texas.

This deponent further states, that, upon the morning of the day upon which the injunction and writ of seizure was served upon this deponent, and the sheriff had taken possession under such process, was the time agreed upon by said Warren to meet this deponent, and go into an examination of the goods, wares, and merchandise contained in the store of this deponent, with a view of making the report before referred to; that, upon deponent proceeding to said store, was met by said Warren at the door of said store, and by him, Warren, requested to step back into the store; deponent did so, and, after going just far enough to be under the hatchway or hoisting place, said Warren again demanded a surrender of said goods, upon him, said Warren, giving this deponent a release from all his liabilities in New York on account of said goods; to this deponent again objected, as contrary to previous agreement, and as contrary to the interests of all concerned, as he, deponent, believed; upon which Warren requested deponent to go up stairs with him, said Warren; and, upon so doing, this deponent found Franklin H. Merriman, attorney for said Warren, sitting in such a position as to have heard any and all conversation that may have passed between said Warren and this deponent, and verily believes it was a preconcerted plan between said Warren and Merriman to entrap this deponent into some admissions that might avail said Warren in a suit already entered against this deponent by said Warren, unknown at the time to deponent, and in violation of agreement between deponent and Warren. Upon arriving upon the upper floor of said store so occupied by deponent, Warren again demanded said goods in presence of said Merriman, which being again refused by deponent, for the reasons before stated, said Warren thereupon turned to the sheriff of Galveston county, then for the first time appearing, and said Warren directed the sheriff to do his duty; upon which the process, or a copy thereof, issuing out of the district court for the first judicial district of the State of Texas, was delivered to deponent by said sheriff, and thereupon all the goods, wares, and merchandise, and books of account, &c., were delivered into the custody of said sheriff; all of which proceedings were prepared, under direction of said Warren, on the evening of the day upon which said Warren entered into a verbal

agreement with deponent to meet together on the Monday following (it being Saturday) to enter into an examination of said stock of goods, all of said Warren's professions and promises being, as deponent believes, intended to lull him into confidence that would enable said Warren more and fully to effect and consummate his, said Warren's, designs to obtain said goods, and wholly to effect the ruin of the business and reputation of this deponent; guided, as deponent verily believes, in this course by the secret instructions of the creditors of S. Newell & Co. and Tyack & Co., in New York, and of evil disposed persons in this city, who were unfriendly to deponent from causes wholly unknown to him, as well as the intention of said Warren to obtain said goods, and purchase the same at a reduced rate from the parties interested, upon his representations to them of such a character as to depreciate their value, and with a view of engaging in a business of similar character in this city upon this stock of goods; all of which is the belief of deponent, founded upon frequent conversations with said Warren upon that subject.

This deponent says, and verily believes, that if the proceeds of the sales of the said goods, wares, and merchandise, now the subject matter included in the suit now instituted in the district court of the United States, for the State of Texas, should be permitted to go into the hands of William E. Warren, herein referred to, or placed in any manner under his control, that the same will be entirely lost and valueless to the creditors, alleged plaintiffs and defendants, and leave this deponent remediless, and without the means of satisfying the liabilities *exhisting* against him as of the firm of Stewart Newell & Co.

STEWART NEWELL.

Subscribed and sworn to before me, this 18th day of July, 1848.

J. BATES, *Com'r.*

NEW YORK, *March* 31*st*, 1848.

S. NEWELL, esq.

DEAR SIR: Yours, of March 11th, I received a few days since, and much to my regret, no news of any cotton on its way yet. Now I think you miss it very much in not taking my advice in this matter, if for no other purpose than merely to relieve the old man's mind. I can appreciate and understand the cause of delay, but Capt. Tyack's mind will contain but the one idea, that there is so much to pay, and nothing coming forward to help along. To show you how much this bare fact of not receiving any cotton is weighing on his mind, a few days since I was looking over some letters from you, which he had kept for a few days, and upon the outside of each one, as he had folded them up for filing away, was written the date and "no cotton yet;" this tells its own story; it is my firm belief that it would have been best for you, if necessary, to have gone out and borrowed the money to have bought a few bales, or sold goods at almost any price for the sake of

getting a little cotton to ship to New York; the little loss made would be nothing compared to the good effect it would have upon the old man. I can assure you that all you can write or say in twenty years would not have as much effect in relieving Captain Tyack's mind as a bill of lading for say only 5 bales [of] cotton; he is thoroughly dejected and out of spirits, and even talks about not advancing any more money, because the capital expected from other sources has not come in; so far as I can make it out, the old man has advanced about $2,000, though I believe he thinks about $4,000, but his mistake lies in the fact that whenever he pays any thing he counts it as coming from his own pocket, whereas some of it he has received for Galveston stock, and some of it should be counted as his own payment on his 30 shares, but I can't make him understand it. As regards the payment on the stock, it is my belief that little or nothing more will come from that source under present circumstances, and every thing seems to be standing still. Those shares sold to Kimball I have heard nothing about, and Boyd & Bremons have not sold a solitary share. As regards myself, there is nothing but bad news. I have not yet been able to get clear of my old affairs, nor can I at present, as many of the creditors hold out, and my funds will not let me have money to become a partner in the house of W. Tyack & Co. until that is effected, because they say it would only render W. Tyack & Co. responsible for my old debts, which is very true. Of my old debts there is still remaining somewhere near $4,500. You see then how I am situated, and to be plain, I am utterly unable to remedy it, so that it does not seem probable that any money will be forthcoming to pay the debts either from yourself or me, which will throw it all upon the old man. Now one thing is very plain, although he does not seem to see it, (so I should judge from his refusing to advance any more,) and that is, that the whole of his property is responsible for the debts of W. Tyack & Co., so that without doubt, under the worst circumstances, the best thing for him to do would be to pay all the debts without any hesitation, and wait patiently till he can get back his money when you have sold the goods. You will see from all this the vital necessity there is for doing something with the goods at once. It is a great pity that you did not a month ago take the whole concern to New Orleans and sell them at auction; there would have been [a] loss to be sure, but there would have been money to pay the debts, and I doubt whether any more loss than will take place as it is, because a large portion of the goods are now getting out of season, and I fear will not sell well; however, it is too late for that now, but I would suggest whether it would not be well immediately to take such as will sell there, to some part of Mexico, and sell them right out for cash, that is, if you can manage to take them yourself, for I would trust no one with them. There is precious little time left now to make arrangements, as almost the whole of the payments come due from the 5th to the 25th of May, and that is but a month off, and how $14,000 is to be paid then, I cannot see; there is one very bad thing about this matter, and that is, the letter you and Capt. Tyack

wrote to Haggerty & Jones, and which they hold. I don't know what will be the effect of that. Of one thing I feel sure, that the creditors knowing the old man to have property, will not even give any extension, unless a good part of the amount is paid down. I don't know what more to say about the matter, or what to advise; but if I had those goods I would sell them some how or other, at almost any price, and send the proceeds at once to pay the debts as far as possible. If you could manage it so as to send half the amount in time, most likely the old man would then think it best to raise the balance; if not, I am afraid he wont do any thing, and then it will result most disastrously to him, for I feel sure he will be sued at once by all the creditors, and his property attached. I shall write you again in a few days.

Yours, truly,
L. MURRAY.

P. S. As I have already said, the best thing to be done, as it seems to me, is in some way to push the sale of the goods, even at a considerable sacrifice, and not think of waiting for the regular course of trade; for it is not to be supposed that, even if business should commence with you at once, you could sell enough in the course of less than one month to render any material assistance in paying the notes which fall due in May. If, however, it is impossible to do this, then undoubtedly it would be best for you to write to the old man in plain terms, (for it will not do for me, because he takes exception to whatever I say,) showing him that if he refuses to pay the notes, he is adopting the the worst possible course for himself, because in any event he has got to pay them, and if he is sued and his property attached, it would be with great loss to himself; whereas, if he pays them as they become due, it will only amount to this, that he will be put to inconvenience to raise the money, but he will lose nothing eventually, because the goods as soon as sold will repay him. From his manner of speaking, I judge he considers himself only responsible for $5,000, and it is necessary he should be enlightened on that point, and the best course pointed out to him.

NEW YORK, *May 29th*, 1848.

DEAR NEWELL: Your letter of May 5th has this morning reached me, and although I wrote you but 2 days since, with the view of explaining matters, yet I feel constrained to answer you at once, because the whole tone of your letter shows me that you are under a false impression on many points; besides which, the whole blame of this miscarriage is thrown upon my shoulders, where, of right, it should not rest. I feel very anxious, indeed, that you should be convinced that the failure on my part has not arisen from want of exertion or desire to fulfil my promise; the great matter of regret is, that I should have entered into any arrangement with you, depending upon the promises of

others. You will, doubtless, be aware of the fact before this reaches you, that William Tyack & Co. have in reality failed; about the 1st of last April I became aware that my hopes of getting capital, where it had been promised, would not hold good, and I immediately set to work to see if I could not do something elsewhere. Mean time, I supposed, as a matter of course, that Captain Tyack would sustain the house for his own interest, if nothing else, and I should then have time to make other arrangements; but it seems he had no such idea. Now you will recollect, that almost all the notes fall due this month, commencing at the 5th, so that you will see what my position is; he has let the notes fall due without taking care of them; and therefore it would be folly for me to attempt to get any of my friends to let me have means to put in under such a state of things. In the course of your letter, you repeat several times, that Captain Tyack has put in $5,000. Now, I presume you get this from him, but how he can say so, I do not understand; for, according to my accounts, he has not put in $3,000. Now, it is furthest from my intention or wish to make any difference or misunderstanding between yourself and Captain Tyack, but I have always entertained feelings of the most friendly character towards you; and as for doubting your integrity, I would as soon have thought of doubting that of my brother; and I feel compelled, therefore, to speak very plainly in this letter. I do not think, Newell, that Captain Tyack has had perfect confidence in you for a long time; this I have gathered from many conversations between us, in which he has been lamenting over ever having gone into such a wild scheme, as he called it, and telling me how foolish his friends called him for relying so implicitly upon you, when he had known you so short a time, and you were going so far away. I have also gathered that it was his desire only to get out of the thing in the best way he could, and that he had no intention of trying to carry it on. He has, of late, expressed doubts before me as to your right to turn the money received from Galveston stock into the concern; and, altogether, I cannot think he has the confidence in you that ought to exist. I mention these things because I think you ought to know them. As regards the letter you speak of, I believe Mr. Draper has not thought of making any charge of misrepresentation. To come to another part of your letter, I cannot understand how you make out that your portion of the capital was looked upon as being certain; it certainly was not so by me, for I thought you had so arranged things, that a certain amount would, without doubt, come in every month; and I never for a moment thought of the contingency arising, of almost every stockholder refusing to pay, because they thought the money not rightfully appropriated; to be sure, I knew there was some risk, because the money was not actually in hand; so there was risk with regard to Captain Tyack's, as appears from the fact of its not all being paid in. In my own case, of course, I thought in the same way that you did, that there could be no doubt about my ability to comply with my promise. I say this, because I do not think it right that the whole blame should rest on me. I am

willing to take my share of it, and can truly say that I never regretted any thing more than having been one cause of the failure of this business. I am satisfied, that, if in January or February, some cotton, or other produce, had been coming on, Captain Tyack would have felt perfectly satisfied; but as that was not the case, he became at once distrustful as to the success of the business, and made up his mind not to put in any more money, as was evidenced by letting that little draft go back; he is not the man to engage in a business of this kind, because if there is the slightest reverse, he is discouraged. I have just been looking over the accounts, and, as near as I can make out, he has not advanced over $2,300; from your source, there has not been (I speak without particular examination) over $1,500. Now, why should all the blame rest on me? When I joined the concern I understood that Captain Tyack was worth from $30,000 to $40,000, from his own account; it seems he is not worth much over $15,000. As I said before, I feel great regret that I have not been able to comply with my promises, but then it should be recollected that my situation was different from that of either of you. The means you intended to put in were under your own control and management, whereas I was dependant upon the promises of others. You may rest assured of the truth of what I tell you, that even if I had been enabled to put in the proposed amount in time to have paid off some of the notes, yet Captain Tyack would not have remained in the concern; for he told me plainly, as long ago as last February, that he was sorry he had ever entered into it, and that all he wished for was, to get out as soon as he could; and all this arose from the fact that nothing was coming here; he expected to have made a fortune, as far as I can judge, from the spring business. As regards the Galveston matter, the fact of its not being tried at this time, will, I think, operate very much against it, for it seems to have become a settled thing in the minds of all the stockholders that it would be tried, and you know how hard it is to convince men of the necessity or benefit of delay. The letter which Franklin sent on does not (so far as Captain Tyack says) contain a word in favor of the affair, but speaks principally of his never having received any thing, and of Edgar's dissatisfaction. I hope this letter will have the effect of convincing you that I have tried to comply with my engagements, and that I am not so much more to blame for the failure than yourself and Captain Tyack.

Yours, truly, L. MURRAY.

NEW YORK, *March 20th*, 1848.

To S. NEWELL & Co.

DEAR SIR: I wrote you on the 18th with somewhat excited feelings; all around me appeared gloomy. I have looked around and paid Littlefield's note of nearly $600 00; and shall also pay Wolf and Gillespea's note. Then I hope we shall have a little time to look around. The first thing is to go into an election for directors and officers for the

Galveston company. I have been sick for two weeks with a fever. I left the city for the purpose of selling stock, in order to increase the company, and at times with good prospects, but I did not sell one share. I will see Talmadge to-morrow, and get him to call a meeting; if he will not do it, I will see McGucking if he will call the company together. I was afraid of making an excitement by turning out Talmadge, and in strong expectation of Coles getting in Waterbury, which would have been a start for us, but he declines. I will now see who will serve that will be popular, and put him in. You have done well with the goods damaged. Mr. Jones gives you much credit. Those papers he says were the best he ever saw from Texas. I think there is not a doubt but they will be all paid to-morrow. I hope and believe you *you* will use every exertion to make sales, if you sell some to meet our other notes. I hope yet all may turn out well if we can only sell; we have goods enough. You know as much as I do the violent opposition there is against us, the Wilson Land company, and I sincerely hope we may live to put them all down. I have not yet insured you; shall I do it? Write me on receipt of this how things look in the opposition company; how Mr. Edgar feels.

In haste, yours, truly,

WILLIAM TYACK.

Murray has done nothing yet.

Received, Galveston, July 10, 1848, from S. W. Doss, of Brazoria, the following amounts: Two thousand dollars in good notes, mortgages, liens, and judgments, and seven thousand seven hundred and fifty-three dollars in lands, full payment of the stock of goods, wares, and merchandise now in our store in Galveston.

STEWART NEWELL.

Recap.—Cash - - -	$2,000	
Notes - - -	2,000	
Lands - - -	7,753	
		$11,753

In presence of—
JOHN WARRIN,
ISAAC D. KNIGHT.

And afterwards, to wit, on the 19th day of July, A. D. 1848, the complainants, by their counsel, filed the following petition to amend, in the words and figures following, to wit:

UNITED STATES DISTRICT COURT,
District of Texas.

WILLIAM TYACK and LINDLEY MURRAY
vs.
STEWART NEWELL and STEPHEN W. DOSS. } (In equity.)

To the honorable John C. Watrous, judge of the United States district court, for the district of Texas, the petition of William Tyack and Lindley Murray, complainants in the bill of complaint in the above entitled cause, respectfully showeth:

That the several answers of the above named defendants have been filed to the amended bill of complaint; and that from the matters contained in the several answers, and disclosed by the same, it is necessary that the complainants' bill of complaint be further amended in matters of substance as well as form. That no replication to defendants' answers, or either of them, have as yet been filed; and that said answers were filed on the 18th of July instant.

Your petitioners therefore pray that their said bill of complaint may be further amended before the next rule day of this court, on condition that complainants serve a copy of said amendments on the said defendants, who have appeared, or on their respective solicitors; and your petitioners also pray that new parties may be made if deemed necessary by their counsel; and your petitioners, &c.

WILLIAM TYACK,
LINDLEY MURRAY,
Complainants.

MERRIMAN, ALLEN, SHERWOOD, and WAGNER,
Solicitors and of counsel for complainants.

On this 19th day of July, A. D. 1848, personally came before me William E. Warren, who being duly sworn says, he is agent and attorney in fact for the above named complainants; and that the matters set forth in the above petition are true, to the best of his knowledge and belief; and further says that the above petition is made on the advice of the counsel for the said complainants, and with a view to promote the ends of justice, and not for the purpose of delay.

W. E WARREN.

Subscribed and sworn before me, this 19th day of July, A. D. 1848.

JOHN C. WATROUS.

And afterwards, on the same day, that is to say, on the 19th day of July, A. D. 1848, the complainants, by their solicitors, filed the following motion, to wit:

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss.

And now, at this day, that is to say, on the 19th day of July, A. D. 1848, the said complainants, William Tyack and Lindley Murray, on filing their petition praying for an order further to amend their bill of complaint in the above cause, move this honorable court that the said

bill of complaint be further amended in accordance with the prayer in said petition, or for such other and further rule or order as the said court may deem proper in the premises.

F. H. MERRIMAN,
E. ALLEN,
SHERWOOD & WAGNER,
Solicitors and of counsel for complainants.

And afterwards, on the same day, that is to say, on the 19th day of July, A. D. 1848, Peter MacGreal, filed his answer to the application made by complainants for an attachment against him, in the words and figures following, that is to say:

In the district court of the United States, sitting in and for the district and State of Texas. In equity.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss.

Motion for attachment.

To the honorable John C. Watrous, judge of the district court of the United States, in and for the State of Texas.

The answer of Peter MacGreal to the above described motion for an attachment in the foregoing suit, at the instance of N. B. Yard, receiver in said suit, respectfully sheweth to your honor:

That he has been acting as the agent of one of the above named defendants, Stephen W. Doss, in the purchase of the store of goods late the property of Stewart Newell & Co., in the city of Galveston, and as such agent received the possession of said store of goods on the tenth day of July instant, and together with the possession of the said store of goods, two books were delivered to him by Stewart Newell & Co. as a necessary and useful reference for said Doss in the sale or disposition of said goods. One of these books was the "invoice book" of said goods, and the other a book containing an inventory and valuation of said goods recently made, as this respondent believes, under the superintendence [and] direction of the sheriff of Galveston county, while the same were in his possession under the process or order of the district court of the first judicial district of Texas; and also certain accounts of sales of parts of said goods made by said firm of S. Newell & Co. prior to the sale and delivery of said store of goods to this respondent for and on behalf of said Doss.

This respondent further answering says, he refused to deliver the said books to said Yard for the reason that he deemed them essential to said Doss in making sale and disposition of said goods; that as such they had been delivered to him by said S. Newell & Co., and that said Yard neither produced, nor as this respondent believes, had the order or authority of this court, which made it obligatory on him to deliver said books to him as receiver of S. Newell & Co.

The said Doss has no claim to, or interest in, the book debts contained in said books, and the said Newell & Co. copied from said books all accounts and other entries in which said firm had any interest previously to the delivery of said books to this respondent as aforesaid, and delivered said books as aforesaid, as no longer of use or value to said firm.

This respondent further answering says, he has no other books, notes, vouchers, memorandums, or inventories, belonging to or claimed by, said firm, than the two books above described. He also states, that he has delivered said books to S. W. Doss, one of the above named defendants, in whose possession they now are, and to whom, as he believes, they justly belong. He refers to the answers of Stewart Newell and Stephen W. Doss, the defendants, filed in this case, as a part of his present answer to the rule of the receiver, as fully explanatory of the facts of this case, his relation to the same, and the circumstances under which he became possessed of said books, and the grounds on which he declined to comply with the request of said Yard for their delivery to him. He therefore submits to the court, that he has not, in any way, violated or refused obedience to the lawful orders of this court, or to any just claim of said Yard professing to act under its authority.

He is ready and willing to yield obedience to any order or decree in the premises which the court may see fit to make. He therefore prays to be hence dismissed, with his costs, &c.; and he will ever pray, as in duty bound, &c. PETER MacGREAL.

Subscribed and sworn to in open court, this 19th day of July, A. D. 1848.

THOS. BATES, *Clerk*.

And afterwards, to wit, on the 20th day of July, A. D. 1848, the motion of complainants for leave to amend came on to be heard; whereupon the court made the following order, in words and figures as follows, to wit:

Wm. Tyack et al
vs.
Newell et al.

This day came the complainants, by their solicitors, and moves the court for leave to amend their bill of complaint; which motion, upon consideration of the court, was granted.

And afterwards, on the 22d day of July, A. D. 1848, the defendant, Stephen W. Doss, by his counsel, filed the following motion, to wit:

Tyack et al
vs.
Newell et al.

And comes Stephen W. Doss, by his solicitors, and moves the court

that the receiver re-deliver the goods in his possession, for reasons set forth in his, said defendant's, two petitions filed, stating that he was a bona fide [owner] of the goods and merchandise of the late firm of Stewart Newell & Co., and specially described in said petitions; and that said goods and merchandise have been unlawfully seized and taken into his possession by N. B. Yard, under color and pretext of his authority as receiver appointed in the foregoing cause, and that he refuses to re-deliver the same to said Doss.

July 22d, 1848.

A. P. THOMPSON,
O. F. JOHNSON,
Solicitors for S. W. Doss.

And afterwards, on the 26th day of July, A. D. 1848, the complainants, by their counsel, filed the following letter of attorney, to wit:

Know all men by these presents, that we, William Tyack and Lindley Murray, of the city of New York, members of the firm of Stewart Newell & Co., of Galveston, Texas, and of William Tyack & Co., of New York, have made, constituted and appointed, and by these presents do make, constitute, and appoint, William E. Warren, of the city of New York, our true and lawful attorney, for us and in our name, place, and stead, to institute, in case of necessity, any suit or legal proceedings, in Galveston or in the State of Texas, for the purpose of securing the property and effects of said firms, and preventing all persons from squandering or making away with the same, by injunction or other process of law, as he may be advised or deem necessary, to compromise and adjust with the said Stewart Newell, any difference or differences that have already arisen or may arise, in relation to the business of said partnerships, or either of them; and upon such compromise, to take possession of and receive all and any security or securities, property, goods, effects, claims, and demands, and to preserve and keep the same; and also, in lawful ways, to seize and take possession of any assets, property, and effects of said partnerships, or either of them, and to preserve and keep the same subject to our order; giving and granting unto our said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully, to all intents and purposes, as they might or could do if personally present, with full power of substitution and revocation; hereby ratifying and confirming all that our said attorney, or his substitute, shall lawfully do or cause to be done, by virtue hereof.

In witness whereof we have hereunto set our hands and seals, the day of May, in the year one thousand eight hundred and forty-eight.

WILLIAM TYACK, [SEAL.]
LINDLEY MURRAY. [SEAL.]

Sealed and delivered in presence of—
AUG'T F. SMITH.

UNITED STATES OF AMERICA,
City and county of New York, ss:

On this thirteenth day of May, one thousand eight hundred and forty-eight, before me, personally known, who, being by me duly sworn, deposes and says that he resides in the city of New York; that he knows William Tyack and Lindley Murray, the persons described in and who executed the above letter of attorney; that he saw them execute the same, and that he subscribed his name as a witness thereto.

In testimony whereof I have hereunto set my hand and affixed my seal of office, the day and year last above written.

E. DELAFIELD SMITH,
Notary public.

And afterwards, on the 26th day of July, in the year of our Lord one thousand eight hundred and forty-eight, by special leave of the court, the said complainants, by their solicitors, filed a further amendment to their bill of complaint, which amendment is in the words and of the tenor following, to wit:

UNITED STATES' DISTRICT COURT,
District of Texas.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss. } In equity.

And now, at this day, that is to say, on the 26th day of July, A. D. 1848, after the filing of the answers of the above named defendants, the above named claimants, in pursuance of a petition, motion, and order thereon, and by special leave of the court, propose and make the following further amendments to their original and amended bill of complaint, that is to say:

Strike out all after the words "unable to pay his debts," on page , of the original bill, down to and including the words "of about one thousand dollars," on page , and insert in the place thereof as follows:

And your orators further show unto your honor, that your said orator, William Tyack, subsequent to the date of the said agreement, and in pursuance and in fulfilment thereof, and on or about the month of November, A. D. one thousand eight hundred and forty-seven, at the city of New York, did advance the sum of five thousand dollars in cash; and which said advancement and fulfilment on the part of your said orator, William Tyack, appears by a letter written by Stewart Newell to your said orator Lindley Murray, under date of the 5th of May, A. D. 1848; in which said letter it is distinctly stated that your said orator, William Tyack, has paid in his said five thousand dollars, and is repeatedly so stated in the said letter; and in addition to said statement in said letter, the said Newell also states and admits in said letter, that your said orator, William Tyack

had not only paid in his five thousand dollars, but had also paid a part of the said defendant, Newell's; and as also further appears, by the statement of the said defendant, Stewart Newell, to your orator's agent, William E. Warren, in the presence and hearing of F. H. Merriman, of the city of Galveston, in which the said defendant, Newell, expressly stated and admitted verbally, on the morning of the 5th June, A. D. 1848, that your said orator, William Tyack, had paid in his said five thousand dollars; that the said five thousand dollars thus advanced by your said orator, William Tyack, was employed in the purchase of goods under the said agreement, and in paying freight, charges, insurance, and incidental expenses on the same; and also the freight, charges, insurance, and incidental expenses on other goods also purchased by your orators and the said defendant, Newell, in the name of Stewart Newell & Co., and which said freight, insurances, charges, and incidental expenses amounted to $1,407 02, or thereabouts; and that also a portion of the said five thousand dollars which your orators aver, but what portion your orators cannot now say, was paid over to said defendant, Newell, to be employed in the business of the said firm.

And your orators further show unto your honor that the said defendant, Newell, and your orator, in addition to the goods purchased with the funds advanced by your said orator, William Tyack, about the same time, and during the month of November and forepart of December, A. D. 1847, extended their purchases of goods, in the city of New York, to the amount of seventeen thousand seven hundred and seventy-two dollars and fifty-eight cents, ($17,772 58,) as appears by a schedule or memorandum contained in a day-book of said Stewart Newell & Co., which said day-book was brought by said defendant, Newell, from the city of New York, as one of the books of the said firm, and marked "S. N. & Co.," and which is now in the hands of the receiver appointed in this cause and ready to be proved; that said schedule or memorandum of purchases is in the handwriting of your said orator, Lindley Murray, and contains a distinct account of the said purchases, and of the individuals or firms of whom the said purchases were made; that also in addition to what appears from said book:

Immediately after the first interrogatory appended to the original bill, required to be answered by the defendant, Stewart Newell, add the following and additional interrogatories, which the said Newell is also required to answer:

2d. Did you write a letter to Lindley Murray, one of the complainants, under date of 5th of May, 1848?

3d. Did you state and admit in that letter that William Tyack had paid in his five thousand dollars, and thus fulfilled the co-partnership contract on his part; and that he had also assisted you to pay some part of yours?

4th. Did you state and admit, on or about the 5th of June, A. D. 1848, to William E. Warren, in the presence of F. H. Merriman, that the complainant, Tyack, had paid in his said $5,000.

5th. Had you any letter from Lindley Murray, or statement from him in writing, subsequent to that date, or subsequent to May 5th, 1848, in relation to Tyack's capital? If so, state it fully, and set forth the whole contents of the letter.

6th. Was the day-book marked "S. N. & Co.," and mentioned in the amended bill of complaint as containing a memorandum or schedule of papers, purchases brought from the city of New York by you?

7th. If not, in what manner was it brought to Galveston?

8th. In whose handwriting is the schedule or memorandum of purchases made?

9th. Were the several and respective amounts of goods purchased on credit by "Stewart Newell & Co.," as set forth in the amended bill, and of the persons, individuals, firms, or corporations as therein mentioned?

10th. If not so purchased on credit, which was not, and how otherwise? State fully and explicitly.

11th. Which of the said debts has been paid, compromised, or released, (if any) to your knowledge?

12th. What knowledge or information have you that any part or portion of the said debts have been released, compromised, or discharged, and of what in particular does that knowledge or information consist? If by letter, state it by setting forth the letter, and who from.

13th. What amount of the goods purchased by "Stewart Newell & Co.," in New York, were sold as damaged goods in the city of Galveston?

14th. By whom were they sold; and what amount did they sell for?

15th. What amount of said goods were sold at auction in Galveston as undamaged goods; by whom sold; for what did they sell; and how much, and what amount of the same did "Stewart Newell & Co." bid off? State particularly.

16th. Against whom do the debts in favor of the said firm exist, mentioned in the amended bill as amounting to fifteen hundred dollars? Give a schedule or memorandum, and state the specific amount due from each individual, with his place of residence, the time when the debt was contracted, and the consideration.

17th. Have the said debts or demands been assigned to any person; if so, when; for what consideration; for what benefit; for what purpose; and under whose control are they now? State specifically.

18th. Have you, in the name of "Stewart Newell & Co.," given any receipt, release, or discharge of the said demands, or any portion of them; if so, which, or what in particular, and when was such receipt, release, or discharge given, and what the consideration for it?

19th. Did the respective amounts or demands against Joseph A. Swett and Isaac D. Knight, mentioned in the amended bill, compose any part of the said amount of fifteen hundred dollars?

20th. Have the said accounts or demands against said Swett and Knight, or either of them, been discharged; if so, how; and when;

and for what consideration; and when did the consideration accrue? State particularly.

21st. Did you, on or about the fifth of June last, state and admit to William E. Warren, in the presence of F. H. Merriman, of Galveston, that you had paid in no part of your capital under the co-partnership agreement?

22d. Did you then and there, and in that conversation, state and admit, as a reason for not paying in the same, that it had not been needed?

23d. From whom were the goods purchased in Philadelphia; by whom paid for; and did you receive money from the complainants, or either of them, to pay for the same? State particularly the whole transactions relative to the goods?

24th. What charges, costs, and expenses have been paid by you in conducting the business of the said firm at Galveston, and what are the particular items? State particularly, giving the amount of each item, to whom paid, when paid, for what matter or service it was for, and how paid, whether in money or goods.

25th. What remittances have you made to the complainants at New York? State specifically of what they consist, whether of money or produce, when received, what advices you have of their reception; if by letter, set forth a copy of the letter.

26th. Have you sent any money; if so, what amount, by whom, with what directions; and was it to be paid over only on certain conditions? State specifically.

27th. Of whom did you purchase the cotton and molasses mentioned in the amended bill of complaint; how was it paid for, and in what?

28th. What amount of the goods purchased by "Stewart Newell & Co." have been sold or disposed of to Lawrence Frosh, of Galveston?

29th. In what manner have the same been settled or paid for; was there a quantity of goods received from the store of "Stewart Newell & Co." by said Frosh, his clerk or agent, on or about the 10th day of July, 1848; of what did they consist? State specifically.

30th. Did John F. Benjamin, late of the city of Galveston, transfer a note of about fifty dollars to "Stewart Newell & Co." in exchange for goods; if so, what has become of the note?

31st. Did you give an order to Alexander Edgar, of the city of Galveston, on the 27th day of April, A. D. 1848, of which the following is a copy, viz:

APRIL 27*th*, 1848.

Captain WILLIAM TYACK.

SIR: You will please pay over to Mr. Alexander Edgar, or to his order, all moneys now or hereafter to be paid into your hands upon stock sold; also to hold for his use and direction all shares of stock forfeited for nonpayment; and oblige, respectfully, &c., yours,

STEWART NEWELL.

32d. Did you sign and deliver the same to said Edgar?

33d. What amount of money had you on hand belonging to the firm of "Stewart Newell & Co." on the 5th day of June, 1848; and what have you done with it?

34th. When did you become personally acquainted with Stephen W. Doss?

35th. Who drew the pretended contract between you and him in relation to the sale of the store of goods of Stewart Newell & Co.?

36th. Who negotiated the terms of the said contract; and who were the persons consulted in making up the terms, and in filing and arranging the consideration? State specifically, and set forth all their names.

37th. By whom, and when was the proposition first made to buy or sell said goods?

38th. Who witnessed the said contract, if any one; did he or they put their name or names to said contract as subscribing witnesses?

39th. Did Colonel John Warren, of Galveston, witness the said contract, or if not, did he witness any contract in relation to the sale of the said store of goods; and if so, what?

40th. Did the draft or bill of exchange mentioned in the amended bill, drawn by Peter McGreal on Allen and Hale, payable to Benjamin C. Franklin, or his order, constitute any part of the payment on, or consideration of, said contract?

41st. Why and for what purpose or object, was the said bill drawn and made payable to said Franklin, or his order?

42d. Who personally delivered the said bill to said Franklin; and who first consulted said Franklin whether he would take said draft or bill, and when was such consultation had?

43d. For what consideration was the said bill drawn made payable, and delivered to said Franklin; when did the consideration accrue; what was received from him for it; and was it delivered to him as his property? State specifically.

44th. Why was the said bill or draft of seven hundred and fifty dollars drawn by Peter McGreal on Allen & Hale, made payable to Isaac D. Knight or order?

45th. Was the same, or any part thereof, intended to be drawn for the benefit of Joseph A. Swett and John B. Jones, one or both?

46th. Has the same, or any part thereof, been assigned, or in any manner transferred to them, or for their benefit, and to whom has the same been so transferred?

47th. What was or is the consideration for any interest the said Swett or Jones, or either of them, may have acquired in the said $750 draft?

48th. Did the said seven hundred and fifty dollar draft ever come into your hands, and if so for what purpose?

49th. In what way had Isaac D. Knight any interest in the same? State specifically the consideration by which he acquired any interest, if any.

50th. What were the respective charges of the said Swett, Frank-

lin, and Jones against you for professional services, due or to grow due, or both, at the time of the sale of the said store of goods, and how have said demands been arranged? State specifically.

51st. Did Peter McGreal, or any other person, pay you any money on the pretended contract for the sale of the said store of goods, and how have said demands to Doss? If so, state who paid the same, how much, and what has been done with it.

52d. Did Peter McGreal, or any other person, pay any money to any other person to answer as payment on said store of goods, and which by any arrangement was to apply on the said pretended sale? If so, state particularly how much, to whom, for what reason and for what consideration.

53d. What part (if any) of the said two thousand dollars cash payment on the pretended sale of the store of goods to Doss was paid down; in what manner was it paid down? State particularly.

54th. What has been done with the avails of the said payment? State particularly.

55th. What part of the said two thousand dollars remains unpaid, if any, through whom is it to come, and how arranged?

56th. Has any note, bill, draft, or other security, been given or taken for any part of the said two thousand dollars cash payment, other than those payable to the order of Franklin and Knight; if so, to whom; for what amount; by whom drawn; to whom drawn; who holds them; and for what consideration have they been assigned or transferred? State particularly.

57th. At the time of making the said contract of sale to Doss, in whose name or names did the several and respective notes, mortgages, liens, and judgments, to the said amount of two thousand dollars, stand? State particularly as to each.

58th. Against whom did the several and respective notes, mortgages, liens, and judgments stand at that time? State as to each.

59th. In whose name or names were they severally taken, created, or obtained, and what was the date of each? State specifically.

60th. If any of the same have been assigned, by whom has such assignment been made; to whom; at what time; and for what consideration? State specifically as to each.

61st. What security or guaranty has been taken or entered into as to the goodness or payment of the said notes, mortgages, liens, and judgments? State specifically, and set forth a copy of the same and time when executed, and the names of security.

62d. At the time of the making of the said contract for the sale of the store of goods to Doss, who held the title to the six hundred acres of land in Brazoria county, on the west side of the San Bernard; who was his immediate grantor, and before what officer was the conveyance acknowledged, and when made?

63d. At the time of making the said contract of sale to Doss, who was the owner or held the title of the half league on the Navisoto,

in Brazos county; who was his immediate grantor; when was the conveyance made, and before what officer acknowledged?

64th. At the time of making the said contract of sale to Doss, who was the owner and held the title to the half league on the Navidad, in the Colorado district; who was his immediate grantor; when was the conveyance made, and before what officer acknowledged?

65th. At the time of making the said contract of sale to Doss, who was the owner or held the title to the twelve hundred and eighty acres of land in Bexar county, granted to Peter MacGreal; who was the immediate grantor of such owner; and when was the conveyance made, and before what officer acknowledged?

66th. At the time of making the said contract of sale to Doss, who was the owner and held the title to the one hundred and seventy-seven acres of land in the city of Houston, about a mile from the old Capitol; who was his immediate grantor; when was the conveyance made and before what officer acknowledged?

67th. When did you first see the lands to examine them; and from your examination, what proportion of timber and prairie land do the several tracts embrace?

68th. From the examination made by you, are they better adapted to the cultivation of sugar-cane, cotton, corn, or other vegetables? State specifically as to the adaptation of each.

69th. In pursuance of what authority from complainants did you sell the whole store of goods to Doss?

70th. Was the said authority in writing, by letter, or otherwise; if by letter, of what date? State particularly and set forth the whole letter.

71st. Had you any conversation or negotiation with MacGreal, or any one else, as to a sale of said store of goods previous to their release by the sheriff, on the 10th of July, 1848? If so, state the conversation fully and in all its particulars.

72d. Will the inventory of the sheriff, Pryor Bryan, compare with the goods sold by you to Stephen W. Doss?

73d. If not, in what respect will they vary?

74th. How many pieces of silk, and how much lace, and what quantity of ribbons, went with the goods delivered to Doss's agent, Peter MacGreal?

Immediately after the 8th interrogatory, required to be answered by the defendant, Stephen W. Doss, insert the following additional interrogatories, which said Doss is also required to answer:

9th. What property, not exempt from execution, did you own on the tenth day of July, 1848?

10th. Of what did such property consist? State specifically, and set forth in detail the description, and where and how situated.

11th. Were you a man of family on the 10th July, 1848, and if so, of whom did your family consist?

12th. What funds had you placed in the hands of Peter MacGreal,

on the 10th day of July, 1848, to purchase goods with? State specifically, and set forth what they consisted of.

13th. Had you given to Peter MacGreal any authority to purchase lands in your name, on the said 10th day of July; if so, when; before whom was the power acknowledged or executed, and when was the same recorded? Set forth a copy of the instrument.

14th. Had you given to Peter MacGreal any power or authority to sell lands or real estate in your name, on the said 10th day of July, 1848; if so, when; before whom was the power executed or acknowledged, and where was the same recorded? Set forth a copy of the instrument.

15th. Who first informed you that a purchase of property or merchandise had been made in your behalf by Peter MacGreal?

16th. *Was* you informed by letter; and if so, what was the date of the letter, by whom written, and when received by you?

17th. At the time of the pretended purchase of the store of goods belonging to "Stewart Newell & Co.," of Galveston, on the 10th day of July, A. D. 1848, had you ever seen Stewart Newell to know him?

18th. How much money did you pay down on the purchase of said store of goods, and in what manner was the same paid or arranged to be paid? State specifically and in detail; if in money, so state it, or if in bills or drafts, give copies.

19th. At the time of making the said contract to purchase the said store of goods, in whose name or names did the several and respective notes, mortgages, liens, and judgments, to the amount of two thousand dollars, stand? State particularly as to each.

20th. Against whom did the several and respective notes, mortgages, liens, and judgments at that time exist? State particularly as to each.

21st. What was the amount of each of the said notes, mortgages, liens, and judgments, and when did the same accrue? State the date and amount particularly.

22d. In whose name or names did the several and respective notes, mortgages, liens, and judgments accrue? State as to each.

23d. Are any of the said mortgages, liens, or judgments, matters of record? If so, state when the same were docketed or recorded.

24th. Have any of the said notes, mortgages, liens, or judgments been assigned or transferred to you, or for your benefit? If so, by whom was the assignment or transfer made, to whom was it made, what was the consideration of such transfer or assignment, how was the consideration to be paid, and by whom was it to be paid? State very fully and particularly.

25th. What security or guaranty was taken or entered into as to the goodness or payment of said notes, mortgages, liens, and judgments? State specifically, and set forth a copy of the instrument of guaranty.

26th. At the time of making the said contract of purchase of sale [of] the store of goods of "Stewart Newell & Co.," on the 10th day of July, 1848, who held the title to the six hundred acres of land in Brazoria county, on the west side of the San Bernard; who was his

immediate grantor; and before what officer was the conveyance acknowledged or proved, and when made?

27th. At the time of making the said purchase, on the 10th July, 1848, who was the owner or held the title to the half league on the Navisoto, in Brazos county; who was his immediate grantor; when was the conveyance made; and before what officer acknowledged or proved?

28th. At the time of making the purchase of the said store of goods, who was the owner and held the titles to the half league of land on the Navidad, in the Colorado district; who was his immediate grantor; when was the conveyance made; and before what officer proved or acknowledged?

29th. At the time of making the said purchase of the said store of goods, who was the owner or held the title to the twelve hundred and eighty acres of land in Bexar county, granted to Peter MacGreal; who was the immediate grantor of such owner; when was the conveyance made; and before what officer was it acknowledged or proved?

30th. At the time of making the said contract for the purchase of the said store of goods, who was the owner and held the title to the one hundred and seventy-seven acres of land in the city of Houston, about one mile from the old Capitol; who was his immediate grantor; when was the conveyance made; and before what officer acknowledged or proved?

31st. Had any conversation been had by you or your agent in relation to a purchase of the said store of goods before they were released by the sheriff on the order of the judge of the district court? If so, state it fully.

32d. How many negroes did you ever own in Texas, and who did you get them of?

33d. What real estate did you ever own in Texas, and who did you get it of?

34th. After the sloop Alamo had sailed with the goods from the port of Galveston, did you or your agent contract to give Mr. Winnie, of Galveston, twenty-five dollars for a horse for a messenger to ride or drive down the island to give the captain of the sloop notice that the receiver or marshal was after the goods?

35th. If not twenty-five dollars, what sum; and who was the messenger sent?

36th. What were the instructions to the messenger, and who gave them?

37th. What were the instructions carried by the messenger, and who carried them, and to whom were they carried?

38th. Were the whole goods purchased by you which were embraced in the inventory or schedule made out by the sheriff, Pryor Bryan; and did those taken by the receiver in the store, and those taken by him on board the sloop Alamo, embrace all the goods purchased by you? State particularly, and if there were any exceptions in your purchase, state what they were.

39th. Was any comparison made of the said sheriff's inventory and the goods purchased by you?

40th. Will the sheriff's inventory compare with the whole goods taken into the custody of the receiver; if not, in what respect will they vary? State fully.

And thereupon, afterwards, on the twenty-eighth day of July, A. D. 1848, Stephen W. Doss, one of the defendants to this suit, filed his further answer to the amended bill of complaint of complainants, which answer is in the words and of the tenor following, to wit:

In the United States district court, in and for the district and State of Texas.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and S. W. Doss. } In equity.

And now, to wit, on this 28th July, 1848, upon the filing of the amendments to the original bill of complaints in the above entitled cause, comes the defendant, Stephen W. Doss, and by leave of the court first had and obtained, makes and files this separate answer to the amended bill of complaints last above described:

In addition to his former answer he answering says: This defendant denies that he, this defendant, and Stewart Newell, or this defendant alone, gives out and pretends that on the 10th day of July, 1848, the whole store of goods of Stewart Newell & Co., of Galveston, was sold by said Newell to this defendant for 11,753 dollars, payable in the manner as is charged in said amended bill, otherwise or in any other manner than this defendant and the said Newell have stated and alleged in their separate answers hereto[fo]re filed in this case; and this defendant states and avers, that the agreement for the purchase by him of the said store of goods was actually and bona fide made, and the said goods delivered under the same at the time, in the manner and for the consideration set forth in his former answer.

This defendant further denies that the allegations and charges in said amended bill, that at the time of entering into the purchase of said store of goods, this defendant had neither two thousand dollars in cash, nor credit to procure the same, and that he had not the said notes, bonds, judgments, liens, or other securities, nor the means to procure the same, and that he had no part or portion of the said lands, nor the means to procure the same; that at the time of purchasing said store he was ignorant of the consideration for the same, of the sources from whence it was to come, and was ignorant of the transactions in relation to said sale; the consideration thereof, and the time when it took place, are true as charged; on the contrary, he states that all and singular they are utterly false and groundless, and refers to his answers to the interrogatories addressed to him by the complainants in said amended bill for a full and detailed contradiction and explanation of these various charges and allegations.

This defendant further denies all and singular the allegations in said amended bill, that Peter McGreal, Lawrence Frosh, Dockerel, A. P. Thompson, or any other person, having some stale or doubtful demands, or some land titles or contracts for land titles, of little value, or of no present availability as a means of raising cash, or knowing the rights of complainants, or the disposition of the defendant to defraud them, did, on or about the 10th July, 1848, or at any other time, combine, confederate, or agree, together with the said Newell, to make a fraudulent arrangement to cheat or defraud the said complainants or the said creditors out of said store of goods, or to make any personal speculation for themselves; and further denies that the said persons, or either of them, did use the name of this defendant as a cover to their alleged wrongful transactions in the purchase of said store of goods, or for any other fraudulent or dishonest purpose, prejudicial to the rights of the said complainants or their creditors; all and singular the allegations in said amended bill, that the said contract of purchase of said store of goods was pretended and not real; that the consideration for the same was pretended and not real; that the agency of Peter McGreal, esq., for this defendant, was pretended and not real; and that said contract was got up to defraud the complainants, are false and groundless in every respect and particular.

This defendant states and charges, upon information and belief, that all and singular the allegations and charges contained in said amended bill, in reference to the payment of the whole, or any part, of the consideration for the said purchase of said goods by drafts on Messrs. Allen and Hale, drawn by Peter MacGreal, esq., relate to circumstances and facts which have transpired since the filing of the original bill in this case, and cannot be made the subject of amendment in the manner now attempted by the complainants. He, therefore, prays and insists, that this honorable court dismiss all and every part of said amendments to which this objection applies, and that the court consider this exception the same as if it had been presented by demurrer; but if this honorable court deems it incumbent on him to answer the same, he answers as follows:

He denies the allegation in said amended bill, that no money was paid down at the time of entering into said contract of purchase or since, by this defendant, or by any one in his behalf, as charged. On the contrary, he states, upon the information of the said Peter MacGreal, esq., and the receipt of Stewart Newell & Co., handed to him by said MacGreal, he believes that two thousand dollars, the part consideration of said purchase, was paid down at the time thereof in cash or its equivalent.

This defendant further answering says, that he knows nothing of the drafts alleged to be drawn by Peter MacGreal, esq., on Messrs. Allen and Hale, nor of the transfers, assignments, or uses made of the same, nor of the contracts or arrangements growing out of or founded upon the same, as charged in said bill; if any transactions, so alleged in this or in any other part of said amended bill, are to affect the interest and

rights of this defendant, he disclaims all intention to admit the truth thereof, and requires strict proof of the same.

With regard to the prayer of the said amended bill, praying alternative relief, this defendant is at all times ready to comply with his said contract, according to the tenor thereof, at such times and in such manner as this honorable court may direct.

This defendant repeats that said contract was made in good faith, for the exclusive benefit of this defendant, and states that all that part of the consideration of said purchase which has been paid or furnished, or guarantied to be paid or furnished, by said Peter MacGreal, esq., has been and is to be so paid and furnished for the sole benefit of this defendant; and the said MacGreal, by virtue thereof, is to take, and did take, no beneficial interest whatever in said goods so purchased.

STEPHEN W. DOSS,
A. P. THOMPSON,
OVID F. JOHNSON,
Solicitors and of counsel for defendant Doss.

Copy of an obligation executed by Peter MacGreal, and referred to in the answers to the interrogatories.

"GALVESTON, *July 10th*, 1848.

Thirty days after date, I promise to deliver to Stewart Newell, esq., or order, two thousand dollars in good notes, mortgages, liens, or judgments now due, or to fall due, or to become due, on or before the first day of January, 1849, for value received guarantied.

$2,000.

(Signed) PETER MACGREAL."

Addressed to this defendant in said amended bill, he makes answer:

To the 9th interrogatory he answers, waiving the impertinence and irrelevancy thereof, and says, that on the 10th day of July, A. D. 1848, he owned one league of land in San Patricio county, and one-third of a league of land in Bexar county; one-fifth interest in the estate of George W. Doss and Rezin Doss, lying chiefly in Pickens and Marengo counties, Alabama, and estimated at over forty thousand dollars in gross, and in the hands of Peter MacGreal for settlement; also four thousand three hundred and sixty dollars, in cash and good securities, then and now in the hands of Peter MacGreal.

To the 10th interrogatory he answers by referring to his preceding answer as a sufficient answer to this interrogatory.

To the 11th interrogatory he answers: That he is a single man, and has never yet been married.

To the 12th interrogatory he answers: That he had in the hands of said MacGreal, on the 10th day of July, 1848, four thousand three hundred and sixty dollars in cash and securities, equivalent to and available as cash; and that the said MacGreal had full authority from

me to invest the same in the purchase of goods or otherwise, having full confidence in the judgment and discretion of my said agent.

To the 13th interrogatory he answers: That he has given to the said Peter MacGreal a full power of attorney to sell lands belonging to this respondent, and also to purchase land for him; that said MacGreal has heretofore sold for respondent several tracts of land, and has also purchased lands for respondent; that a very full power of attorney, executed in the year 1838, by him to said MacGreal, is on record in the county clerk's office of Brazoria county, the original being in possession of said MacGreal, and respondent not having a copy thereof; that, in addition thereto, he has given other special powers of attorney to the said MacGreal, of which respondent has kept no copies; that none of said powers of attorney have ever been revoked by this respondent, and he has ratified the acts of said MacGreal, under the same.

This respondent further answers and says: That said powers of attorney were acknowledged before the county clerk of Brazoria county, or a notary public, but when this respondent cannot now recollect, but presumes the said MacGreal, if called upon, will exhibit the originals.

To the 14th interrogatory he answers: That he refers to his preceding answer as a sufficient answer to this interrogatory.

To the 15th interrogatory he answers: That he was first informed thereof by Peter McGreal in relation to the purchase of the goods from Stewart Newell & Co.

To the 16th interrogatory he answers: That he was informed by letter; that the same was dated on the 10th day of July, A. D. 1848, which letter detailed the purchase of the said goods, and the terms thereof, truly and as set forth in answer heretofore filed; the said letter is in the handwriting of, and signed by, Peter MacGreal, and was by me received on the 11th or 12th day of July, A. D. 1848.

To the 17th interrogatory he answers: That the purchase of the goods from Stewart Newell & Co. was in good faith, absolute, and unconditional; but respondent has no distinct recollection of having before that time seen Stewart Newell

To the 18th interrogatory he answers and says: That, from information derived from Peter MacGreal, and from the receipt of Stewart Newell & Co., the sum of two thousand dollars in cash, or its equivalent, was fully settled and paid.

To the 19th interrogatory he answers: That he does not know in whose name or names the notes, mortgages, liens, or judgments for two thousand dollars stand, unless it be a part of some twelve or fifteen thousand dollars in the name of, and belonging to, Peter MacGreal against divers persons, out of which the said MacGreal has agreed to select the said amount for my benefit, to enable me to comply with my said contract for the purchase of said goods from Stewart Newell & Co., and the said sum was guarantied by said MacGreal; but this respondent is unable to state the names of the persons against whom said claims exist.

To the 20th interrogatory he answers: That he does not know.

To the 21st interrogatory he answers: That he does not know, and cannot therefore state.

To the 22d interrogatory he answers: That he does not know.

To the 23d interrogatory he answers: Upon information and belief that the judgments and mortgages in favor of Peter MacGreal, and belonging to him, and referred to in answer to the 19th interrogatory, are matters of record; but further this respondent cannot state.

To the 24th interrogatory he answers: That no such assignment or transfer has been made, as referred to in this interrogatory. The two thousand dollars in notes, mortgages, judgments, or liens, were to be paid by, or assigned and delivered by, Peter McGreal, who guarantied the same; and this amount, and the two thousand dollars cash paid Newell & Co., credited to said MacGreal on the amount in his hands belonging to me; and this has already been so settled.

To the 25th interrogatory he answers: He refers to the preceding answer as sufficient answer to this interrogatory, and the annexed copy of the obligation of said MacGreal, which he makes a part of this answer.

To the 26th interrogatory he answers: That he has seen the original grant of the government of Texas to Peter MacGreal, assignee of J. Delaney, for the said tract of land, and the title to said land was in Peter MacGreal on the 10th day of July, 1848.

To the 27th interrogatory he answers: That the title to the half league of land on the Navasota, in Brazos county, was in Peter MacGreal on the 10th day of July, 1848, as he is informed and believes; that said land was bought from Robert Mills, but that John Adriance was the immediate grantor to said MacGreal, and the deed was proven before A. P. Crittenden, esq., notary public for Brazoria county, and it is now about one year or more since the execution of the same.

To the 28th interrogatory he answers: That, at the time of purchasing the goods from said Newell & Co., the title to one-half league of land on the Navidad, in Colorado district, part of John D. Ragsdale's league, was in Peter MacGrael; said Ragsdale was his immediate grantor, the deed was executed, as he believes, over a year ago, and proved before A. P. Crittenden, esqr., notary public in Brazoria county.

To the 29th interrogatory he answers: That the 1280 acres, in Bexar county, was patented to Peter MacGreal by the State of Texas, together with some 20 or 30,000 acres of other patented lands held by said MacGreal in the same county, as this respondent has been shown the patents, and believes to be true.

To the 30th interrogatory he answers: That at the time of making said purchase, the title to said one hundred and twenty-seven acres of land in Houston, and for a year or so before that time, was in Peter McGreal, whose immediate grantor was one David Russell, and the deed was acknowledged before the county clerk of Harris county, and long since recorded in said county of Harris.

To the 31st interrogatory he answers: That he is informed by his agent, Peter McGreal, esq., that long before any suit between the said

complainants and Stewart Newell, his said agent was negotiating for the purchase of said goods, and had partially completed the same when said goods were seized by the sheriff of Galveston county; and his said agent also informed him, and the same in every respect he believes to be true, that after said seizure all negotiation relative to said purchase of goods was suspended wholly, and after said goods had been fully restored to the possession of said Newell & Co., his said agent, as he or any other person might or could lawfully do, as he is advised and believes, bought said goods, as is in respondent's answer fully and truly set forth; but he says that, in relation to the purchase of said goods, he has not had any previous conversation with said Newell.

To the 32d interrogatory he answers, and waives the impertinence of this and other interrogatories, says that he has owned in Texas about fifteen negroes at different times; that he has purchased negroes of James Baldwin, of county, Mississippi; J. Ragsdale, of Memphis, Tennessee; J. N. Hite, of New Orleans, and other persons, whose names he does not now recollect.

To the 33d interrogatory he answers: That he has owned in Texas three leagues of land in San Patricio county, one league and above two-thirds of a league in Bexar county, one league and a half of land in Refugio county, and several town lots, and as near as now recollected, not having any of his papers or memoranda, he purchased of the following persons, William Carroll, Hugh McGreal, E. Waller, Charles Leonard and wife, and Peter McGreal, and Thomas J. Green.

To the 34th interrogatory he answers: That neither by himself or his agent, nor any other person in the knowledge, information, or belief of this respondent, was said Winnie or any other person offered twenty-five dollars, or any other sum, for any horse or vehicle, to carry any messenger down the island, or to give the captain of the Alamo notice that the marshal or receiver was after said goods; and he further says, that *that* he is informed by his said agent, that Mr. James Dockrill, of Brazoria, was requested to give speedy notice to this respondent that the store in which his said goods were had been forcibly broken open by the marshal or receiver, or both, and about between three and five thousand dollars worth of said goods seized; that doubtless the same high handed and unlawful measures would be adopted by said persons in taking and seizing this respondent's goods on board the Alamo, and by the advice of counsel this respondent was advised to go on board the Alamo, so as to prevent the said persons, and all other trespassers from hereafter being able to plead ignorance of the rights of respondent, or show or attempt to show any thing, reason, or excuse in mitigation of damages for such trespasses; and he also says, that neither his said agent, as he is informed and believes, nor this respondent, contemplated or intended secreting said goods, or running them beyond the jurisdiction of this honorable court.

To the 35th interrogatory he answers by referring to his preceding answer.

To the 36th interrogatory he answers: That, from the information of his said agent, the instructions to said James Dockerell were as stated in answer to the 34th interrogatory, to which he refers as sufficient answer to this interrogatory; and that said instructions were given by respondent's said agent, Peter McGreal.

To the 37th interrogatory he answers by referring to his preceding answers as sufficient answer to this interrogatory.

To the 38th interrogatory he answers: That from the information of his said agent, the whole of the goods embraced in the inventory of the said sheriff, P. Bryan, and all other goods contained in said store, were purchased as stated in respondent's answer heretofore filed; that as to the goods taken by the receiver on breaking open the store, and those taken by said receiver on board the sloop Alamo, from the information derived from Peter McGreal, they constitute and are the goods purchased as aforesaid.

To the 39th interrogatory he answers: That he made no comparison of the goods purchased by his said agent, with the inventory of the said sheriff, but from information and belief he says, that the amount of said goods, their quality, and adaptation to the Texas market and trade was well and truly known to his said agent, in whose judgment he entertains full confidence.

To the 40th interrogatory he answers and says: That, from information and belief, the goods taken into the possession of the receiver are the goods purchased, as hereinbefore stated, from Stewart Newell & Co., and, as he is informed and believes would, on the 10th day of July, 1848, compare with the inventory aforesaid, but whether the said receiver has now in his possession or custody the whole of said goods as purchased as aforesaid, this respondent, not having examined the same in the custody of the receiver, does not know and cannot state; and he further answering says, that on the said 10th day of July, A. D. 1848, after his said agent completed said purchase, he disposed of the cotton umbrellas, two toys, three baskets champagne, one or two boxes tea, one box candles, and, with the above exceptions, the said goods ought now to compare with said inventory, unless some of the said goods have been abstracted or carried off since taken into possession by the receiver, without the knowledge or consent of this respondent or his said agent, the said Peter McGreal, esq.

STEPHEN W. DOSS,
A. P. THOMPSON,
O. F. JOHNSON,

Solicitors and of counsel for deft. Doss, residing at Galveston.

In the United States district court, for the district and State of Texas.

WILLIAM TYACK and Lindley Murray, complainants,
against
STEWART NEWELL and S. W. Doss, defendants. } In equity.

In this case the defendant, Stephen W. Doss, upon oath says, that

he has carefully read over the foregoing answer to the amended bill of the complainants, and also the foregoing answers to the interrogatories propounded to him in said amended bill, and that the facts and statements therein made, when stated as of his own knowledge, are true in substance and effect; and those facts and statements made upon the information of others he believes to be true in like manner.

STEPHEN W. DOSS.

Sworn to before me, 28th July, 1848.

THOS. BATES,
Master in chancery.

And afterwards, on the same day, to wit, on the 28th day of July, the defendant, Doss, by his counsel, filed the following affidavit, to wit:

In the district court of the United States, in and for the district and State of Texas, in chancery.

Between WILLIAM TYACK and Lindley Murray, complainants,
and
STEWART NEWELL and Stephen W. Doss, defendants.

In this cause comes the defendant, Stephen W. Doss, and upon oath says, that the facts stated in his complaints and motions heretofore filed on the 11th day of July and the 14th day of July instant, concerning the taking of said goods by said receiver, are true in substance and effect as therein stated; that the said complaints were not sworn to at the time of their filing, on account of this defendant not having then arrived at Galveston; and prays that [they] be taken as sworn to.

STEPHEN W. DOSS.

Sworn to before me, 28th July, 1848.

THOS. BATES,
Master in chancery.

And afterwards, to wit, on the 29th day of July, A. D. 1848, Stewart Newell, one of the defendants in this cause, by his solicitor, filed the following affidavit, to wit:

UNITED STATES DISTRICT COURT.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL & Co.

In this cause comes the defendant, Newell, and states that, in the list of book debts assigned to the said B. C. Franklin, esq., filed as part of his answer this day filed, there is error discovered by this deponent

since the filing thereof, and that the copy of said book debts hereunto annexed and herewith filed, together with a copy of the said assignment, shows the true and correct statement of the book debts so assigned; this defendant fell into the said error in having made the said first mentioned statement in the absence of said Franklin, and without access to the original assignment, and upon recollection only; that shortly after filing said answer, upon application to said Franklin, he discovered the said error which he hastens to correct, and prays that his said answer in this particular be taken as amended according to the true and correct copy of said debts and assignment herewith as above mentioned filed.

STEWART NEWELL,
JAS. A. SWETT,
B. C. FRANKLIN,
J. B. JONES,
Solicitors and of counsel for defendant, Newell, residing at Galveston.

Sworn to before me, July 28, 1848.
THOMAS BATES, *Master in chancery.*

Copy of the book debts assigned to B. C. Franklin, and assignment of the same, referred to in the answer of defendant Newell.

Theodore Dorset	$16 48
Sam'l Maas	155 52
J. G. Harbrook	73 59
S. Kirkland	39 03
F. A. Walley & Co.	74 94
J. H. Bennett	9 30
Mrs. M. Bumgarten	113 26
C. O'Conner	31 00
E. O. Lynch	3 25
A. C. Crawford	7 13
J. H. Sterrett	13 50
Dr. J. C. Kuhn	2 50
P. J. Monard	1 25
J. Hurdman	3 00
Jno. Derrick	2 50
A. Moore	2 00
	$548 75

I hereby transfer and assign the above accounts to Benjamin C. Franklin, esq., for a full and valuable consideration, subject to all just off-sets.

STEWART NEWELL & CO.

Galveston, July 10, 1848.

And afterwards, on the 29th day of July, the defendant, Newell, by his attorney, filed the following motion, in words and figures as follows, to wit:

WILLIAM TYACK and Lindley Murray, complainants,
vs.
STEWART NEWELL and Stephen W. Doss, defendants.

In equity.

And now comes Stewart Newell, defendant in the above entitled cause, and moves this honorable court that the bill of complaint of said complainants may be dismissed upon the bill and the several answers of said defendants, Newell & Doss, and for other reasons to be shown hereafter to the court.

J. A. SWETT,
Counsel for defendant Newell.

And for further motion in the above and foregoing entitled cause, Doss says, that said Lindley Murray ought not to have been, and not longer to be, a party complainant in said bill of complaint; he, said Murray, having revoked all authority under which said bill of complaint was made, instituted, and filed, against said Newell by said complainants, a copy of which revocation is hereto appended; therefore, said Newell moves this honorable court that said Lindley Murray may be dismissed as party complainant in said bill of complaint.

J. A. SWETT,
Counsel for defendant Newell.

Here follows a copy of revocation, referred to in foregoing motions, and made part thereof:

NEW YORK, *July 8th*, 1848.

"WM. E. WARREN, esq.

I hereby revoke all authority conferred upon you in a power of attorney executed by Wm. Tyack and myself, bearing date day of May, 1848, and direct that any and all goods that you may have obtained from Stewart Newell under said power of attorney be returned to said Stewart Newell.

In witness whereof I have hereunto set my hand and seal, this eighth day of July, in the year one thousand eight hundred and forty-eight.

Signed, LINDLEY MURRAY.

And said defendant moves the court to make revocation a part of said motions.

J. A. SWETT,
Counsel for defendant Newell.

I, Stewart Newell, one of the defendants in the above entitled cause,

make affidavit and say, that I am personally acquainted with said Lindley Murray; that the above is a true copy of the revocation mentioned in said foregoing motions; that I am well acquainted with the handwriting of said Murray and his signature; that I have often seen him write and sign his name; that appended to this motion is a true copy of the original revocation herein mentioned; that said revocation is in the handwriting of said Murray, and bears his genuine signature.

STEWART NEWELL.

Sworn to and subscribed in open court, 29th July, 1848.

THOS. BATES, *Clerk.*

And afterwards, on the same day, to wit, on the 28th day of July, A. D. 1848, Stewart Newell, one of the defendants herein, filed his separate answer to the bill and amended bill of complainants, in the words and of the tenor following, that is to say:

In the United States district court, in and for the district and State of Texas.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss. } In equity.

And now, to wit, on this 28th day of July, A. D. 1848, upon the filing of the second amendments to the original bill of the said complainants in the above entitled cause, comes the defendant, Stewart Newell, and with leave of the court first had and obtained for that purpose, makes and files this separate answer to the amended bill of the complainants last above described, and answering says, in addition says, to his answer filed on the 18th July, 1848, that he again denies that subsequent to the date of the said articles of co-partnership on or about the month of November, 1847, or at any other time, the said complainant, Tyack, advanced the sum of five thousand dollars in fulfilment of his covenant in the said articles of co-partnership; and this defendant further repeats and says, that if he did, in a letter addressed to Lindley Murray, one of the complainants, under date of the 5th of May, 1848, state or admit that the said complainant, Tyack, had paid said sum of five thousand dollars, or had assisted to pay, or paid any portion of the five thousand dollars which this defendant was bound to pay under said articles of co-partnership, the said statement or admission was made in consequence of the representations made by the said Tyack to this defendant, that he, the said Tyack, had so paid the said sum of money referred to, but which said representations this defendant has since learned to be untrue; but on the contrary he alleges and charges on information, by letters from the said complainant, Lindley Murray, which said letter, dated at New York 29th May, 1848, is hereunto annexed and made a part of this answer, that the advances

made by the said Tyack did not exceed twenty-three hundred dollars. This defendant neither admits nor denies the writing of such letter to said Murray as is described in the plaintiff's bill; and, if the allegations concerning such letter in plaintiff's amended bill are to be considered to his disadvantage, he requires proof of the same. As to so much of the allegations contained in complainant's said amended bill, which set forth that it appears, by the verbal statement of this defendant, made to William E. Warren, agent of the complainants, in the presence and hearing of F. H. Merriman, of the city of Galveston, on the morning of the 5th June, 1848, or at any other time, that said Tyack had paid in the said sum of five thousand dollars, or that the said five thousand dollars was employed in the purchase of goods under the co-partnership agreement, in paying freight and other charges on the goods so purchased, or other goods belonging to the firm of Stewart Newell & Co., amounting to the sum of $1,400, or thereabouts, or that a portion of said five thousand dollars was paid over to this defendant to be employed in the business of said firm, this defendant further answering says, he does not recollect making any or all of the above admissions referred to above; and, if he did make any such admissions touching the said payment by said Tyack of said five thousand dollars, or touching the application of the said sum, of which admissions this defendant requires proof, he made the same upon the representations of the said Tyack, as above in this and his preceding answer stated; but has since discovered, as above mentioned, that said Tyack's representations were untrue. This defendant is not aware of having had any conversation with said Warren upon the subjects, or any of them, as above charged as admitted by him in the said amended bill, in the presence and hearing of the said F. H. Merriman, as therein charged; and, if said Merriman was present or within hearing of any such conversation, this defendant believes he, the said Merriman, must have been in some secret place, unseen by, and unknown to, this defendant, for the purpose of hearing the same, in order to enable him to become a witness against this defendant. With regard to the allegation in said amended bill, that the said sum of five thousand dollars, charged to have been advanced by said Tyack, was employed in the purchase of goods under said agreement, and in paying freight, insurance, and other charges, to the amount of $1,407 02, or thereabouts, and that a portion of the said five thousand dollars was paid over to this defendant for the business of said firm, this defendant denies the same as charged. He states that the said advance was in part not exceeding $2,300, or thereabouts, and of the application of this last named amount he has no account. He admits that about one hundred dollars thereof was paid to this defendant about the time he left New York, to pay expenses incidental to the transaction of the business of the firm. This defendant further answering admits, that the purchases of goods amounted to the sum of seventeen thousand seven hundred [and] seventy-two dollars seventy-eight cents, as charged in said amended bill. He also admits that the credit purchases amount to the sum

of about fourteen thousand dollars, or a little upwards, and that the credit purchases were paid for by drafts drawn in the manner described in the said amended bill. In making this statement and admission, the defendant craves leave of this honorable court to state that, in his former answer, he discovers that he has erroneously stated the aggregate amount of all the goods purchased for Stewart Newell & Co., and the amounts purchased on credit. This defendant fell into the said error by not having the books containing the said entries in his possession; he made his answer from a rough and hasty memorandum sketched off by him while the said books were in the possession of the said sheriff of Galveston county; he inadvertently one invoice, and made an error in the addition, so that, instead of the said respective sums of sixteen thousand three hundred and twelve dollars and thirty cents aggregate purchases, and about thirteen thousand dollars credit purchases, the said answer should have admitted, and it is so now admitted, immediately upon the discovery of said error, that the said aggregate and credit purchases amount to the sums respectively stated in the said amended bill, or thereabouts; and this defendant prays this honorable court that his former answer may be amended so as to make the sums therein set forth conform to the amounts herein admitted. This defendant further answering denies, that he brought from New York the day book referred to in said amended bill, in which book the said amended bill charges that a certain schedule or memorandum appears, showing the amount of purchases and the debits of the firm of Stewart Newell & Co., in the handwriting of one of the complainants, Murray, marked S. N. & Co., and now in the hands of the receiver; but states that the said book was forwarded to him at Galveston in a box with other books and articles from New York. This defendant further states, that he had no agency in making the said entries in said book, and, not having the same in his possession, cannot state the precise accuracy of the items thereof. This defendant denies that he exhibited the said book and the memorandum or schedule therein contained as a true and correct statement of the purchases of said firm in New York, as charged against him; but he admits that he gave said Warren access to all the books of the said firm, among which the said book was included, believing and representing that the said books of the firm thus exhibited would show its true condition. This defendant did not at the time anticipate any difficulty or difference between his said co-partners, Tyack and Murray, and himself, or said Warren and himself, and had not taken the precaution to examine or verify the entries made in said particular book, or any of the said books, by the said Murray, and is not now possessed of the proper vouchers, papers, bills, and other means of verifying the entire accuracy of said entries. This defendant had not, nor has he yet, had suitable opportunities to post up and arrange the books of said firm for a general settlement of its affairs; he cannot therefore state with absolute precision how far the list of creditors, and the amounts respectively due each, as charged in said amended bill, are correctly stated; but he charges and believes

that the general condition of the extent of the liabilities and purchases of said firm are correctly set forth in his former answer as herein prayed to be amended, and in this his present answer he states that he is now ready and willing, upon being put in possession of all the books and vouchers of the said firm of Stewart Newall & Co. for that purpose, at such time and manner as this honorable court may direct, to make out a full detailed account and correct statement of all his affairs and transactions for said firm up to the present day.

This defendant further answering says, that he has not lately given out and pretended, as is charged against him in the amended bill of complaint, otherwise than is set forth and charged in his former answer to the original and amended bill of the complainants filed in this cause, that the complainants have been released in some way from the payment of the demands above specified, or some part of the same; and he now again repeats and recharges against the said complainants Tyack and Murray, that he is informed and believes that they have entered into an arrangement or compromise with the alleged creditors of the firm of Stewart Newall & Co., or a major part of them, to release and discharge the said Tyack and Murray from the said claims and demands upon some terms and conditions unknown to this defendant; and this defendant further states and charges, that the said William E. Warren, acting as agent for the complainants, gave him to understand, and induced him to believe, both in conversations with this defendant and with Dr. J. D. Knight, that some arrangement had been entered into between the creditors of the firm of Stewart Newell & Co. and the said Tyack and Murray, the design and operation of which was to release and discharge the said Tyack and Murray from the claims and demands of the said creditors.

This defendant further answering denies that certain goods consigned to the firm of S. Newell & Co. by J. F. Tyson, of New York, amounting to about three hundred dollars, increases the liability of said firm beyond the amount stated of its unpaid purchases, as charged in complainant's bill; this defendant states, that in fact and in truth the said goods were consigned to the firm of Stewart Newell & Co., at Galveston, by the said Tyson, with instructions to sell the same at public or private sale at discretion as early as convenient, and remit the proceeds to New York to said Tyson; that at the time of issuing the process out of the State court, as mentioned in said bills and answer, the said goods had been on hand only about three weeks; that this defendant had been unable to sell advantageously any part of the said goods; that he had written to the said consignor for orders to send the same back to New York, and was waiting for an answer when the said store of goods, in which the said consignee's goods were stored, was seized by the sheriff of Galveston county, at the instance of said Warren, by virtue of the process referred to; that prior to the issuance of the said process from the said State court, this defendant informed the said Warren upon what terms and conditions the said consignment of goods, consisting of a lot of hardware, was held by the said firm; that

the same was not the property of said firm, and was to be returned to said consignor or sold for his account, according to instructions to be received in answer to said letters; but that said Warren, notwithstanding this information given to him by this defendant, had the same inventoried under the said State process as the property of the said firm, and told this defendant that he would treat and consider it as partnership property. This defendant protested against such a course as unjust and unfair towards said consignor, as a manifest appropriation of the property of said consignor to the use and benefit of said creditors, or of the parties represented by said Warren, and further told said Warren that it would be justly regarded as a swindling transaction on the part of those who should have a hand in it, but the said honest agent refused to accede to the request of this defendant, and caused the said consigned goods to be seized and placed in the hands of the receiver appointed by said court, together with the property of said firm.

This defendant further answering says, that so far as relates to the allegation made in said amended bill that the said defendant Newell furnished a statment of the sales of the firm of Stewart Newell & Co., of Galveston, showing the same to amount in the aggregate to $7,298 22 or $7,210.95, exclusive of the goods sold at auction, this defendant admits the same to be substantially as stated; but so far as respects the further charge made in said amended bill "in connexion" with said statement, that the amount of goods sold at auction was over two thousand dollars, as charged to have been expressly stated by this defendant to said Warren, this defendant denies the truth of said allegation, and says that the amount sold at auction, saving and reserving said damaged goods, was only about $250, sold to pay the dishonored draft as stated and described in his former answer.

This defendant further answering says, that he denies having been paid in cash, on or about the last day of January last, seven hundred [and] eighty dollars [and] sixty-seven cents, by E. O. Lynch, auctioneer, for sales of damaged goods at auction for account of S. Newell & Co., as charged in said amended bill; but he says that, upon the sale of said damaged goods, a small portion only was sold to cash purchasers, and this defendant deemed it advisable, for the benefit of said firm, to buy in the great bulk of said damaged goods, which he did, and added the goods so purchased to the stock on hand of said firm; of the said sum of $780 67, charged to have been paid over to this defendant, but a very small portion was in cash, the balance having been the price of the damaged goods bought in by him, as just above described. This defendant states that about sixteen or seventeen hundred dollars worth of goods, at invoice prices, were so sold at auction as damaged goods, for account of the underwriter, and that the gross amount of sales of said damaged goods was, as charged in said bill, $867 55.

This defendant further answering denies that in consequence of any neglect on his part in not causing survey report and notice to be made in season, of the damages suffered on the goods on the voyage outward from New York to Galveston, or by permitting them to be for any great

length of time in the storehouse without examination, as charged against him, has caused any loss of recovery of damages against the said underwriters. On the contrary, this defendant alleges that he used the most prompt and judicious means in his power to ascertain what damages the goods had suffered; to have survey estimates, and reports, and sales made, to fix the liability of the said underwriters; that he transmitted the necessary evidences of his proceedings in this matter by the very first opportunity which offered to New York; and as proof of his diligence in this particular affair, and as further proof of the said liability being acknowledged by the said underwriters, he refers to the letter of said Tyack & Co. to the said Newell & Co., dated at New York, 20th March, 1848, which is hereunto annexed and made a part of this answer, and particularly to that part of said letter relating to the statement of Mr. Jones, therein mentioned; this defendant stating that the said Jones, referred to in said letter of Tyack, is the insurance broker or agent of the said underwriters, who is authorized and employed, as this defendant is informed and believes, to examine, acknowledge, and adjust all claims against said underwriters. This defendant again charges and avers, as he has heretofore done, that the said Tyack and Murray, or the said Tyack, received the sum of $850, or thereabouts, for said damages, as stated in this defendant's previous answer.

This defendant further answering says, that he admits, as charged in said amended bill, that he remitted to the said Tyack & Co., at New York, thirty barrels of molasses and eighteen bales of cotton, but alleges that the value of the same was about eight hundred dollars cash value.

This defendant further answering denies that he has received in cash the sum of $2,544 36, as charged in said amended bill; but he admits that, excepting the errors of accounts and addition, he has received on cash sales of said goods, $1,639 69, or thereabouts. He refers to the preceding part of this answer for the explanation of the sums received for sale of damaged goods. He also refers to his former answer and the preceding part of this answer, for explanation of the item of $124, for sales of undamaged goods, as charged in said bill. He therefore admits that he has received in cash, for the sales of said goods, about two thousand dollars, but denies that he has received any other or larger sums of money for sale of said goods.

This defendant further answering denies that, on or about the 10th July, 1848, or at any other time, he transferred or assigned the notes, accounts, book-debts, and other choses in action of the said firm of Stewart Newell & Co., or any part thereof, to Benjamin C. Franklin, for any debt or demand due, or to grow due, from this defendant to the said Franklin, as charged against him. But he admits and states that he did assign, on the 10th July, 1848, or thereabouts, to Benjamin C. Franklin, esq., who is an attorney at law of Galveston, the said book-debts, notes, and claims of said firm, for the purposes of collection, as specified as practicable; that the said assignment or transfer was made

for the purpose of the more prompt and speedy collection of said claims, and the application of the proceeds thereof to the use and benefit of said firm and of all parties interested therein. That if the said Franklin has attempted to collect any of said claims, of which this defendant is not informed, he, said Franklin, is acting for the benefit of this defendant and of the said complainants, and of all parties interested in the assets of the said firm. This defendant further states and avers, that the said judgment or transfer to the said Franklin was made bona fide, for the purposes above stated, and for no other; and this defendant expressly denies that the same was done to place the said demands or property in secret trust for this defendant, Newell, or that it was done with a view to defraud the complainants, or the creditors of said firm of S. Newell & Co., as charged in said bill. All said allegations relative to the intents and purposes of said transfer, this defendant avers to be utterly false.

This defendant further answering says, that neither he, nor, as far as he knows or believes, the said Doss, has ever given out or pretended, in any way or manner, or at any other time than in their answers respectively filed hereto[fo]re in this cause, that the whole store of goods of said S. N. & Co. at Galveston, was sold to the said defendant, Doss, for the sum of $11,753, as charged in said amended bill, payable as therein charged; this defendant further answering says, that there never was any pretended sale by him or by said firm of S. N. & Co. made to the said Doss as charged in said amended bill, but the said sale was bona fide, actual and absolute, and for the purposes and considerations mentioned in said answer heretofore filed by this defendant. And this defendant further answering says, that so far as respects the pecuniary condition and resources of the said Doss, and the ownership by said Doss of real or personal estate, either in possession or action, or other right, this defendant is not informed, and cannot state; but he states and avers, that so far as the said Doss had agreed to pay money or to transfer personal or real securities, or real estate in payment for said goods, he has complied, and tendered himself willing to comply, with all his covenants and agreements, and has furnished satisfactory evidence to this defendant of his ability to comply, and given satisfactory guaranties to this defendant that he will comply, with the executory portions of his said agreement.

This defendant further answering denies all and singular the charges and allegations under the said amended bill of all [and] any conspiracies, combinations, or confederacies, made between this defendant, Peter MacGreal, Lawrence Frosh, Pockerel, A. P. Thompson, or any other person or persons whatever, as charged in said bill, to defraud the complainants or the creditors of said firm, either by assisting this defendant to make any fraudulent arrangement by which the said store of goods should be placed out of the power of the complainants, or of the creditors of said firm, on or about the 10th July, 1848, or at any other time; or to take from the said MacGreal, or others therein described, any stale or doubtful demands, or any land titles or contracts

for land of no present availability as a means of raising cash, in consideration of the sale of said store of goods to said Doss, or for a personal speculation to themselves, or for any other purpose whatever. He further denies that any of the said persons named, or this defendant, made use of the name of the said Doss as a cover to any wrongful transactions in said contract, as alluded to and charged in said amended bill. This defendant further avers and states, that all and singular the allegations so often made and repeated in said amended bill "in connexion" with said charge of conspiracy last referred to, about a "pretended contract," a "pretended consideration," a "pretended agent or agents," set up by said persons charged with said conspiracy to defraud the complainants or the said creditors, are utterly false and groundless in each and every particular as imputed and charged in said amended bill.

This defendant further answering states and avers, that at the time of entering into and consummating the contract between himself and the said Doss, and at the delivery of the store of goods to the agent of said Doss, to wit, on the 10th July, 1848, a written receipt was given by this defendant for the firm of S. N. & Co. to the said Peter MacGreal, agent of the said Doss, a copy of which is annexed to this answer, and made a part thereof. This defendant states that the said first payment in cash of $2,000, mentioned in said receipt, was secured and made to this defendant by Peter MacGreal, esq., the agent of said Doss; that a portion of said sum of $2,000, to wit, about $1,200, was paid by the said MacGreal, agent as aforesaid, to Benjamin C. Franklin, Jos. A. Swett, and John B. Jones, in pursuance of and in accordance with an order given by this defendant to said McGreal for that purpose; that forty-two dollars and fifty cents were paid upon the order of this defendant to J. A. Sauters for rent of said store, due by said firm; and the balance, to wit, about seven hundred and fifty dollars, was directed by this defendant to be paid over or secured to Isaac D. Knight, to be by him held to the use of the firm of S. N. & Co., to be paid over for the said use upon the order of this defendant, in like manner as the said book debts and other choses in action assigned to said Franklin as above mentioned. Whether the said payments, or any of them, were made by the said MacGreal in such bills or drafts as charged and described in said amended bill with such volumnious circumlocution, this defendant has not been fully apprised, and does not of his own knowledge know; if they have been so paid, and in the judgment of this court this be a material fact, he requires strict proof thereof. In whatever mode the said MacGreal, as agent as aforesaid, paid the said $1,200 to Messrs. Franklin, Swett & Jones, the same was received, considered, and accounted for to this defendant, by them as cash; and so far as respects the balance of eight hundred dollars, the same has been amply secured, as to be regarded and to answer as cash whenever the necessities of said firm may require. This defendant denies that the allegations made in said bill that the amounts respectively paid to Messrs. Franklin, Swett and Jones, or either or any

part of said amounts, was for an individual debt or debts due or to grow due to the said Franklin, Swett or Jones, or either of them; but on the contrary he states that the same were in discharge and payment of debts due to the said Franklin, Swett and Jones, respectively, for professional services rendered to this defendant for the benefit of S. Newell & Co., as he is advised and believes, in resisting the unlawful, oppressive, and ill-judged proceedings instituted by the said Warren to seize the store and goods of the firm of S. N. & Co., to break up their business, and destroy their credit, in defiance and breach of the said covenant in the said articles of co-partnership providing an amicable and economical mode of settling all disputes between the said co-partners.

This defendant further denies that he contemplated or endeavored to dispose of the property of S. Newell & Co. in fraud of complainants or of the creditors of the firm *of* as charged against him. He further denies that all or any of the payments made, or to be made, by said Doss depended in any respect whatsoever upon the contingency that the said sale to said Doss should be held valid or otherwise, but avers that the said sale to said Doss was absolute and in good faith, and the payments made, and secured to be made, in consideration thereof were absolute and unconditional. And this defendant says, that all and singular the allegations, charges, and pretences set forth in said amended bill contrary to the statements in this answer now made, or that any such or other contingency or condition was attached to said sale, or the said payments directly or indirectly, are utterly false and without any ground or foundation whatever. And this defendant further answering states and shows to the court that all and singular the allegations contained in said bill which have reference to the payment of any portion of the sum of $2,000, first to be paid by said Doss by means of certain drafts or bills drawn on Messrs. Allen and Hale, relate to facts and transactions arising and taking place after the filing of the original bill by the complainants in this case, as this defendant is informed and believes; he therefore insists that the same are not fit subjects of amendment to said original bill, and on this and other grounds they ought to be dismissed.

This defendant further answering admits that there does not stand charged in the book of the said firm of S. N. & Co. two hundred dollars, or thereabouts, to Jos. A. Swett, esq., and about two hundred dollars against Isaac D. Knight; this defendant denies that he has given any fraudulent or pretended receipt or discharge or other release to the said Swett or the said Knight, as charged against him, or that he has at any time contemplated to do so; that so far as respects the said account of said Knight, the same is now due and owing to the said firm; that so far as relates to the said account of Jos. A. Swett, the said Swett had rendered to the said firm of S. N. & Co. professional services as an attorney at law, prior to the institution of any proceedings at the instance of said Warren against this defendant, and upon a settlement of account between the said Swett and the said S. Newell &

Co.; the said book account against said Swett was applied to the payment for his said professional services, and thereby cancelled.

This defendant denies that the complainants are entitled to the alternative relief prayed for in their said amended bill, and insists that the same cannot be granted by the court, and prays the court to dismiss *the* so much of their said amended bill as contains said prayer, and prays that this objection may be considered by the court the same as if it had been taken advantage of by demurrer.

This defendant further answering denies that on the 10th of July, 1848, or at any other time, he, this defendant, or the said Isaac D. Knight, carried away, or employed any other person or persons to carry away, any boxes or cases containing any choice or valuable fancy goods belonging to the firm of Stewart Newell & Co., or that any such goods were taken away on that day, or any other day, by this defendant, or the said Knight, or by any person or persons for him, or by his direction or permission, as charged in said amended bill; this defendant further denies that a large amount of such choice and valuable goods, worth about one thousand dollars, or any other sum, was withheld from said sale and delivered to said S. W. Doss, as charged in said bill; but this defendant states and admits that, on the said 10th day of July, after the said sale and delivery to said Doss, this defendant, and the said Knight for him, with the knowledge and consent of the said McGreal, agent of the said Doss, did take from said store a small paper box containing eight cotton shirts, worth about one dollar each, and also two small boxes of tea, the one containing about forty pounds, and the other about ten pounds, which cost thirty cents a pound, all for the family and personal use of this defendant, and worth in the aggregate about twenty-five dollars; this defendant denies that he removed any other portion of said goods, wares, and merchandise, or that he reserved any portion thereof out of the said sale and delivery to the said Doss, except the goods mentioned, to wit, the said tea and shirts, and also except the said consignment of hardware which was also reserved out of said sale and delivery, and placed in charge of said MacGreal, agent of said Doss, for the benefit of said consignor.

This defendant further answering denies that on or about the 2d June, 1848, or at any other time, the professed agent of the complainants, Wm. E. Warren, made divers and repeated offers to settle and arrange amicably the matters in dispute between the complainants in this case and this defendant, as charged and alleged in the said amended bill; he also denies that he, this defendant, then, on the 5th June last, or at any time, stated and declared to the said Warren that there was no way or terms in which he, this defendant, would settle with the complainants, and that he would hold on to the effects of said firm, as charged in said amended bill; on the contrary, this defendant charges, that on the said 2d day of June, and the said 5th June, and at all times before and since, he expressed to the said Warren his willingness and desire to settle and adjust all difficulties between himself and the complainants,

mentioned in the manner provided in the articles of co-partnership, and expressed himself ready and prepared to name, on his part, a referee, if said Warren would do the same and abide by any award the said referees might render. The said Warren refused to accede to this proposition, or to any other proposition which would not dispossess this defendant of the charge of the store of goods, and to place the same in the custody and control of said Warren. This defendant had good reason to believe, and did believe, that such surrender of the possession of said goods to said Warren would be a virtual betrayal of his trust as a co-partner, and would greatly endanger the safety and honest application of the proceeds of the sale of said goods to the use and benefit of his partners and creditors. The conduct and demeanor of said Warren towards this defendant, coupled with information received from the complainants by letter, apprising this defendant of the circumstances under which said Warren was appointed to said agency, and the real purposes for which said Warren came to Texas, induced this defendant to repose very little confidence in the motives and designs of said Warren, and strongly prepossessed him against placing said goods, in any manner, under his custody or control. For the circumstances showing the conduct of said Warren, under color and pretext of his agency as aforesaid, and for the propositions respectively made by the said Warren to this defendant, and by this defendant to said Warren, he refers to an affidavit made and sworn to by him before J. Bates, commissioner, on the 18th July, instant, which affidavit he annexes to this answer, and makes the same a part thereof. He also refers to the affidavit of J. D. Knight, heretofore filed in this cause, and also made a part of this answer; and for the information above mentioned as received by this defendant by letter, he refers to the letter from said Tyack, dated Monday, the 8th May, 1848, which is hereunto annexed and made a part of said answer.

This defendant further answering denies all and singular the allegations in said amended bill not herein expressly admitted; and having fully answered, repeats and prays for the same relief and judgment as in his former answer, to which this answer is an addition.

STEWART NEWELL.

To the interrogatories appended to the said amended bill of the complainants, which the said Stewart Newell is required to answer, this defendant answers as follows:

To the second interrogatory he answers: I do not recollect whether or not I wrote a letter to the said Lindley Murray of the date referred to in this interrogatory; possibly I did; I have no copy of any such letter.

To the third interrogatory he answers: I do not recollect the contents or admissions contained in any such letter as is described in the foregoing interrogatory, and if I wrote any such letter, I refer to my answer to this amended bill of complaints for the circumstances under which the same was written, and the reasons that induced me to state and

admit, if I did do so, that said Tyack had paid the whole or any part of his payment of five thousand dollars, under the articles of co-partnership, and also of his paying, or assisting me to pay, any part of mine.

To the fourth interrogatory he answers: I do not recollect making such statement and admission as is referred to in this interrogatory; if I did, I refer to my former answer to the complainants' amended bill, for the circumstances under which the same was made, and the reason thereof.

To the fifth interrogatory he answers: I have received a letter from Lindley Murray, subsequent to the fifth of May, eighteen hundred and forty-eight, in relation to Tyack's capital, among other things, of the date of the twenty-ninth of May, eighteen hundred and forty-eight, which said letter is annexed to the foregoing answer, and to which I now refer for a more full and complete answer to this interrogatory.

To the sixth interrogatory he answers: I did not bring the day-book, referred to in this interrogatory, from the city of New York.

To the seventh interrogatory he answers: It was sent to me in a box with other books and papers, from the city of New York to Galveston, per the brig Herald, some time in January or February last.

To the eighth interrogatory he answers: It was in the handwriting of Lindley Murray, one of the complainants.

To the ninth interrogatory he answers: I have not the original invoices or bills of purchase in my possession, and never had; they are in New York, so far as I know; they were in possession of complainants the last time that I saw or heard of them; I cannot, therefore, answer whether the amounts referred to in this interrogatory, as set forth in the amended bill, and the names of the firms, persons, &c., are correctly mentioned therein.

To the tenth interrogatory he answers: I cannot state fully and explicitly which were and which were not purchased on credit; I have not in my possession the proper books and vouchers to enable me to do so.

To the eleventh interrogatory he answers: I do not know; I have not the means to ascertain for certain; no account has been rendered me by the complainants which will furnish the means of such knowledge.

To the twelfth interrogatory he answers: I have no certain knowledge or information upon the subject referred to in this interrogatory, and I derive from William E. Warren, the agent of complainants, the knowledge and information which induced me to believe that some compromise has been made between the creditors and complainants, or some release has been given them; and I refer to my answer to complainants' amended bill for a more full answer to this interrogatory and an explanation of the subject matter thereof.

To the thirteenth interrogatory he answers: Between sixteen and seventeen hundred dollars worth of said goods.

To the fourteenth interrogatory he answers: They were sold by E.

O. Lynch, auctioneer, and brought the amount of eight hundred and sixty-seven dollars and fifty-five cents, ($867 55.)

To the fifteenth interrogatory he answers: Amount sent to auction was $257 18, cost price; $128 88 worth was sold; the remainder was bought in by me for benefit of S. Newell & Co., sold by E. O. Lynch.

To the sixteenth interrogatory he answers: I annex a list of the names and amounts due from each debtor, to this answer, as a part of my answer to this interrogatory; I obtain the same from the book account of sales of Stewart Newell & Co., in which the dates and items more fully appear; the consideration of said debts was the sale of goods out of the store of Stewart Newell & Co., in Galveston.

To the seventeenth interrogatory he answers: A part of said debts were assigned on the tenth of July instant, for the purpose of speedy collection, to B. C. Franklin, esq., for the benefit of the partners and creditors of Stewart Newell & Co.; they are under the immediate control of the said Franklin, and subject to my ultimate control as a partner of the said firm; I refer to my answer to the foregoing amended bill for a more full detail of the circumstances under which the said assignment or transfer was made, and I annex to this answer a list of the said debts thus assigned.

To the eighteenth interrogatory he answers: I have given no release or discharge of any of said demands or debts, except to Joseph A. Swett, esq., as mentioned in my foregoing answer, and I refer to the same for a full and detail[ed] answer to this interrogatory.

To the nineteenth interrogatory he answers: They do.

To the twentieth interrogatory he answers: The account of Dr. Knight has not been discharged; the account of Jos. A. Swett has been discharged on the tenth of July instant, in the manner and for the consideration mentioned in my foregoing answer, to which I refer for a more full answer to this interrogatory.

To the twenty-first interrogatory he answers: I do not recollect making the statement or admission referred to in this interrogatory, nor do I believe any such statement or admission was made.

To the twenty-second interrogatory he answers: I do not recollect making any such statement and admission as is referred to in this interrogatory, nor do I believe any such was made.

To the twenty-third interrogatory he answers: From John McCanles; they were paid for by me, and I received no money from complainants, or either of them, to pay for the same. This is the whole transaction in relation to those goods.

To the twenty-fourth interrogatory he answers: That there is a small account or cash book, which I believe is in the hands of the receiver appointed in this case, showing the amounts paid to different persons for postage and labor about the store of Stewart Newell & Co.; I refer to said entries in said book for the amounts paid, time when, and persons to whom paid by me; in cash paid of the said firm, I paid three hundred dollars, or thereabouts, to J. A. Santers, for rent of store at different times, chiefly in goods of the firm; I paid also for wharfage,

storage, commission, etc., on account of said firm, to Rice, Adams & Co., one hundred and fifty-three dollars, cash of the firm; paid also to S. B. Andrews four hundred and fifty dollars, clerk hire, in cash of the firm, during the six months he was engaged.

To the twenty-fifth interrogatory he answers: I made no remittances, except of the cotton and molasses referred to in the foregoing amended bill and answer of this defendant, together with the claim for damages to goods upon the Sun Mutual and Atlantic Mutual Insurance offices in New York, amounting to eight hundred dollars or thereabouts; and also the sum of two hundred and fifty dollars, transmitted to Tyack by S. B. Andrews, to be paid the Nautilus Insurance Company; I have received no letters or advices of the reception of the same, except a letter from Tyack acknowledging the receipt of the claim for damages against the said insurance offices, which said letter is annexed to the foregoing answer, and to which I now refer my answer to this interrogatory.

To the twenty-sixth interrogatory he answers: I have not, and refer to answer to preceding interrogatory for a more full answer hereto.

To the twenty-seventh interrogatory he answers: Of Lawrence Frosh; it was paid for in account of merchandise and money.

To the twenty-eighth interrogatory he answers: To an amount not exceeding eight hundred and fifty dollars.

To the twenty-ninth interrogatory he answers: They were paid and settled for by the cotton and molasses above referred to, and shipped to Tyack & Co., New York; the accounts between the said Frosh and Newell & Co. are unsettled, and I do not know the exact condition of the same; I do not know whether on or about the tenth of July last, said Frosh or his clerk or agent received any goods whatever from the store of Stewart Newell & Co.; I neither know, or have I heard, anything relative to the subject of this inquiry.

To the thirtieth interrogatory he answers: I know no such man as John F. Benjamin, referred to in this interrogatory, nor have I seen, or do I know, anything about a note of fifty dollars therein referred to.

To the thirty-first interrogatory he answers: I did give an order to Alexander Edgar on or about the 27th day of April last, but whether the copy of an order set forth in this interrogatory is a correct copy of the same this defendant does not recollect, and cannot state; Edgar told me he had destroyed said order shortly after I gave it.

To the thirty-second interrogatory he answers: Yes.

To the thirty-third interrogatory he answers: I have no memorandum of the amount on hand; I think it was a little above two hundred dollars; I have expended it for my necessary uses.

To the thirty-fourth interrogatory he answers: Since the sale was made on the tenth of July last, I knew him by name and character, and that he resided in Brazoria for some time.

To the thirty-fifth interrogatory he answers: There was no pretended

contract between us drawn for the sale of the store of goods [of] Stewart Newell & Co.

To the thirty-sixth interrogatory he answers: If this interrogatory by using the term "said contract," refers to the "pretended contract" described in the thirty-fifth interrogatory, then I answer: That no such contract was ever negotiated, *fined* or arranged between this defendant or any other person or persons whatsoever; but if this interrogatory refers to the contract that actually was made for the sale of the store of goods of Stewart Newell & Co. to Stephen W. Doss, on the tenth day of July inst., then I answer, that the negotiations for the same were conducted by this defendant upon one side, and Peter McGreal, esqr., on the other, as agent of said Doss; and no person, so far as I know, was consulted or concerned therein, but this defendant and the said McGreal, previous to the consummation and closing of the same.

To the thirty-seventh interrogatory he answers: The proposition herein referred to was made to me by Peter McGreal, esq., on behalf of his brother-in-law, said Doss, in the latter part of May last, to purchase said store of goods.

To the thirty-eighth interrogatory he answers: There was no written contract for the sale of said goods; said contract was verbal at the time of the delivery of the said goods to the said Peter McGreal, esq., as the agent of said Doss; a written receipt was given by Stewart Newell & Co. to the said agent, dated the tenth of July instant, which said receipt was witnessed by John Warren and Doctor J. D. Knight; a copy of the said receipt is annexed to the foregoing answer of this defendant to the amended bill of complaints.

To the thirty-ninth interrogatory he answers: Col. Warren signed the receipt described in the last above mentioned answer as one of the witnesses; he signed no other paper.

To the fortieth, forty-first, forty-second, forty-third, forty-fourth, forty-fifth, forty-sixth, forty-seventh, forty-eighth and forty-ninth, this defendant says, that the subjects referred to in said interrogatories relate to transactions occurring subsequent to the filing of said complainant's original bill in this case, and, as this defendant will insist, are not proper subjects of amendment to said bill in the manner now proposed to be made by said complainants; and this defendant prays the court to have the same benefit allowed him in his exceptions to each and all the said interrogatories, as if he had *speedily* demurred to the same. But if this honorable court shall be of opinion that he is bound to answer the same, then he answers them as follows:

To the fortieth interrogatory he answers: I know nothing, of my own knowledge, in reference to the subject matter inquired of [in] this interrogatory.

To the forty-first interrogatory he answers: I do not know.

To the forty-second interrogatory he answers: I do not know.

To the forty-third interrogatory he answers: I know nothing of the bill referred to in this interrogatory; I was indebted to B. C. Franklin,

esq., in the sum of five hundred dollars, for professional services rendered to Stewart Newell & Co., and I ordered and requested Peter McGreal, esq., agent of S. W. Doss, to pay the same to said Franklin, which said McGreal has done, and I have the receipt of the said Franklin for the same.

To the forty-fourth interrogatory he answers: It was for the purpose of securing the amount therein mentioned for the benefit of the partners and creditors of Stewart Newell & Co., and is more fully explained in my answer to the foregoing amended bill, to which answer I here refer as a full answer to this interrogatory.

To the forty-fifth interrogatory he answers: No.

To the forty-sixth interrogatory he answers: No.

To the forty-seventh interrogatory he answers: Nothing.

To the forty-eighth interrogatory he answers: I did not, but I have the right to control the proceeds thereof for the benefit of the partners and creditors of Stewart Newell & Co.

To the forty-ninth interrogatory he answers: He had no beneficial interest in the same, and it was placed in his hands as trustee as aforesaid.

To the fiftieth interrogatory he answers: This is an impertinent and irrelevant question; but if this honorable court considers it incumbent upon him, he answers, that at the time of the sale of said goods, the said firm of Stewart Newell & Co. was indebted to Benjamin C. Franklin, esq., five hundred dollars; to Joseph A. Swett, esq., five hundred dollars; to John B. Jones, esq., two hundred dollars; which sums were due and payable at the time of the sale of said store, for professional services respectively rendered, and the same have been paid, arranged by the said Peter McGreal, agent as aforesaid, according to my orders and directions, and I hold the receipts of the said Messrs. Franklin, Swett and Jones, which were made and delivered to me before the filing of the original bill in this case.

To the fifty-first interrogatory he answers: I know nothing of any pretended contract, referred to in this interrogatory, but Peter McGreal, esq., agent for S. W. Doss, paid the said two thousand dollars, according to my order and directions, *according to* on the actual contract of sale of said goods, as is explained in my answer to the amended bill of complaints, and in my answers to the preceding interrogatories.

To the fifty-second interrogatory he answers: He did not.

To the fifty-third interrogatory he answers: The first two thousand dollars, to be paid on the sale of the said store of goods to the said Doss, was paid in the manner described in my answer to complainants' amended bill, and in my answer to the preceding interrogatories; to which respective answers I refer for a full answer to this interrogatory.

To the fifty-fourth interrogatory he answers: The same have been disposed of in the manner described in my answer to the complainant's amended bill, and in my answers to preceding interrogatories.

To the fifty-fifth interrogatory he answers: No part of the said two thousand dollars remains unpaid, and the same has been arranged in

the manner described in my answer to complainant's amended bill, and to preceding interrogatories.

To the fifty-sixth interrogatory he answers: No.

To the fifty-seventh interrogatory he answers: He does not know, but he had good, sufficient, and satisfactory guaranty from Peter MacGreal, esq., that the notes, mortgages, liens, and judgments referred to in said interrogatory were such as the said Doss was bound to transfer and assign, in consideration of his purchase of the said store of goods of Newell & Co.

To the fifty-eighth interrogatory he answers: I cannot state; I looked mainly to the guaranty of Peter MacGreal, esq.

To the fifty-ninth interrogatory he answers: I do not know.

To the sixtieth interrogatory he answers: No such assignments have been made.

To the sixty-first interrogatory he answers: The security or guaranty taken, as herein referred to, was the security and guaranty of Peter MacGreal, esq., a copy of which is hereto attached and made part of the answer of defendant to this interrogatory.

To the sixty-second interrogatory he answers: Peter MacGreal, esq., held the title to said lands as the assignee of J. Delaney, from the original grant of the government, dated day of 1847.

To the sixty-third interrogatory he answers: The title to said land was in Peter MacGreal, esq., and this defendant is informed and believes, that the same was bought from Robert Mills, but that John Adriance was the immediate grantor to said MacGreal, and that the said deed of conveyance was executed more than a year ago, and proved before A. P. Crittenden, esq., notary public of Brazoria county.

To the sixty-fourth interrogatory he answers: That the title to said land was in Peter MacGreal, esq., and that the same was granted by the government of Texas to John D. Ragsdale, and by him conveyed to Peter MacGreal, esq., upwards of a year ago; said deed was acknowledged before A. P. Crittenden, notary public of Brazoria county.

To the sixty-fifth interrogatory he answers: That Peter MacGreal, esq., held the title to said land, as the grantee from the State of Texas, by patent dated .

To the sixty-sixth interrogatory he answers: The title to said land was vested in and held by Peter MacGreal, esq., by deed from David Russell, executed more than a year ago, proved before the county clerk, and acknowledged before the said clerk, and long since recorded in said Harris county.

To the sixty-seventh interrogatory he answers: I never have seen the said lands to examine them at all, but from information and belief, on which I can rely, I state and believe that a large portion of all and each of said tracts is well timbered.

To the sixty-eighth interrogatory he answers: I can state no facts from my own examination of said lands, but from information and belief, on which I can rely, I state that the said tract of land, lying in Brazoria county, is well adapted to the cultivation of cotton and sugar;

that the said half league of land, on the Navisoto, in Brassos county, is well adapted to cotton and sugar, but rather better suited to cotton than sugar. He also states that the half league on the Navidad, in the district of Colorado, is admirably adapted to the cultivation of sugar cane. He further states that the said twelve hundred and eighty acres in Bexar county is well adapted to the cultivation of cotton, and is excellent wheat and corn land, and all other vegetables suitable to the climate, which may be planted and properly cultivated thereon. He further states, that the tract within a mile from the old Capitol of Houston is well adapted to the cultivation of sugar and other vegetables, and from its convenient contiguity to the market of Houston, is of peculiar value. This defendant further states, that he verily believes that each and all of said tracts of land is worth a great deal more than he has given for the same; and that a reasonable degree of diligence and attention applied to the disposal of the same, would render them as valuable to the creditors of Stewart Newell & Co. as any other property or consideration that could have been obtained for said store of goods.

To the sixty-ninth interrogatory he answers: I sold the whole of said store of goods to said Doss in pursuance of the general authority vested in me by said articles of co-partnership, and also by virtue of the letters of Tyack and Murray, attached to my answer to complainant's amended bill, to which said letters I refer as a part of my answer to this interrogatory, and also because I considered the said sale the best disposition I could make of said goods for the benefits of the complainants and all persons interested in the firm of Stewart Newell & Co., and to prevent them from being squandered, consumed, and sacrificed in a needless and oppressive litigation, sought to be commenced and carried on by said Warren.

To the seventieth interrogatory he answers: I have stated in my last preceding answer all that I know and can state relative to the inquiry of this interrogatory.

To the seventy-first interrogatory he answers: I refer to my answer to the thirty-seventh interrogatory, as part of my answer in addition thereto. Mr. Hubbel and Mr. Hasbrook, and the complainants' agent, William E. Warren, proposed purchasing the stock of goods of Stewart Newell & Co., but the times and particulars of such conversations he does not remember; he closed with said MacGreal in behalf of said Doss, because he considered it the most eligible and advantageous arrangement for all the partners and creditors of the firm of Newell & Co., of any other proposition made for the purchase of said stock of goods.

To the seventy-second interrogatory he answers: I believe it will so compare; I know no reason why it should not.

To the seventy-third interrogatory he answers: I do not know in what respect they vary, or whether they vary at all; if they do vary, I can only account for it on the supposition that the said inventory was unskilfully and inaccurately made, or that some portion of the said

goods must have been removed, abstracted, or purloined, after the said inventory was made, and while the same was in the store of Newell & Co., or in the hands of the agents or porters engaged in removing the same from the said store, or under the charge of the said sheriff, the said receiver, Yard, or the said agent, Warren, who had some control over, or access to, the said goods.

To the seventy-fourth interrogatory he answers: I do not know, and cannot state; so far as I recollect there were no pieces of silk, lace, or ribands, in the said store of goods sold to said Doss; there was no article of this description purchased by the firm of Stewart Newell & Co., or at any time contained in their stock of goods bought for Galveston.

STEWART NEWELL.

In the United States district court, for the district of Texas.

WILLIAM TYACK and Lindley Murray, complainants, against STEWART NEWELL and Stephen W. Doss, defendants. } In equity.

In this case the defendant, Stewart Newell, upon oath says: That he has carefully examined and read over the foregoing answer to the amended bill of complaint, and also the foregoing answers to the interrogatories propounded to him in said amended bill, and that the facts therein set forth, and the statements made, when stated as of his own knowledge, are true in substance and effect, and those facts set forth, and statements made, upon the information of others, he believes to be true in like manner.

STEWART NEWELL.

Sworn to before me, this 28th July, 1848.

THOS. BATES,
Master in chancery.
J. A. SWETT,
Counsel for defendant, Newell, residing at Galveston.

And afterwards, on the 31st day of July, the complainants filed the affidavit of Wm. E. Warren, and exhibits, as follows, to wit:

United States district court, district of Texas.

WILLIAM TYACK and Lindley Murray vs. STEWART NEWELL and Stephen W. Doss. } In equity.

Personally appeared before me, William E. Warren, who being by me duly sworn, deposes and says: That he is the agent and attorney in fact of the above named complainants under the power of attorney

hereto annexed, and marked "A;" that he is also the agent and attorney in fact of the several and respective persons, firms, and corporations, whose names are set forth or signed to the power of attorney marked "B," and appended hereto, and who were, and are, the creditors of the firm of "Stewart Newell & Co.," and that he was constituted such agent and attorney as set forth, and in the manner mentioned in the power of attorney hereto appended, and marked "C," in connexion with the power of attorney marked "B;" that said powers of attorney were executed under the following circumstances, and for the purposes and considerations as follows, that is to say: the complainants, Tyack ar Murray, were not deemed by the said creditors of the firm of "Stewart Newell and Co.," to have sufficient property in the State of New York to meet the liabilities of said firm; that fearing losses unless the firm at Galveston was fairly and properly managed, and the avails applied to the liquidation of the debts and liabilities of the said firm; that the said creditors also fearing that something was wrong with the concerns of the firm at Galveston, and suspecting that Tyack and the said creditors had been imposed upon by Newell, and having also a repugnance to seeing Tyack, who was regarded a very honest but credulous *man* old man sacrificed; and the complainants deeming it also necessary that their interests should be protected in the property of the firm at Galveston, the complainants on the one part, and the creditors on the other, did execute, and simultaneously deliver, the said powers of attorney constituting deponent their agent and attorney in fact as expressed in the respective powers of attorney; and in consideration that the said complainants would execute and deliver to said deponent the power of attorney hereto appended, the said creditors agreed with said complainants that they, the said creditors, would be at one-half of the expense of, and compensation to, deponent for his, deponent's, services; and also to one-half the charges, fees, costs, and expenses that might accrue in any suit, proceedings, or litigation, in case the same was necessary to have the property of "Stewart Newell & Co." so secured that the same, or the avails thereof, could be fairly applied to the payment of the debts of the said firm; that the said complainants, in consideration of the agreement on the part of the said creditors to pay one-half the expenses, compensation, &c., as well as for the protection of their own interests, did execute their said power of attorney as aforesaid appended.

And this deponent further says, that he received the letter of instructions, on behalf of the said creditors and complainants hereto appended, written in the handwriting of Simeon Draper, jr., and signed by him and others in behalf of the said creditors, and approved by said Tyack on behalf of complainants. And further says, he has at no time received any other or different instructions from the said creditors or the complainants, or either of them, and never had the least intimation that any other or different instructions had ever been sent deponent, and was not in the least aware that any attempted revocation of his powers had been given, or sent to Galveston, until the paper was introduced in

court upon which the motion to dismiss this cause is founded, and which purports to be a revocation of deponent's authority by said complainant, Murray.

And this deponent further says, that the whole charges, fees, compensation, costs, and expenses, which have accrued under deponent's proceedings, as the said agent and attorney in fact for the several and respective parties in suits and proceedings in the name of complainants, and for which said creditors are liable to pay the one half, and the said complainants the other half, under their said agreement, would not fall much, if any, short of two thousand dollars, up to the time deponent had the first notice of any attempted revocation on the part of said Murray.

And deponent further says, that said complainant, Murray, is reputed to be, and as deponent believes is, entirely insolvent; and further says, that, since deponent's arrival in Galveston, in a conversation with Newell, he understood from him that Tyack was not acquainted with Murray until he, Newell, introduced them together, and that Tyack and Murray became acquainted but a short time previous to entering into the articles of co-partnership.

And deponent further says, that the annexed letters, written in the handwriting of Newell, and his principal clerk, Andrews, under date of the 15th of April, and marked "E" and "F," were brought by deponent from New York, and formed a part of the representations which, if found to be true by deponent, an extension of time was authorized in reference to the demands of the said creditors: and deponent further says, Newell admitted to him that he, Newell, knew of said Andrews writing a letter to Tyack on the subject of the business of the firm.

W. E. WARREN.

Sworn and subscribed before me in open court, this 31st day of July, A. D. 1848. THOS. BATES, *Clerk*.

A.

Know all men by these presents, that we, William Tyack and Lindley Murray, of the city of New York, members of the firm of Stewart Newell & Co., of Galveston, Texas, and of William Tyack & Co., of New York, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, William E. Warren, of the city of New York, our true and lawful attorney, for us and in our name, place, and stead, to institute, in case of necessity, any suit or legal proceedings in Galveston, or in the State of Texas, for the purpose of securing the property and effects of said firms, and preventing all persons from squandering or making away with the same, by injunction or other process of law, as he may be advised or deem necessary; to compromise and adjust with the said Stewart Newell any difference or differences that have already arisen, or may arise, in relation to the business of said partnerships, or either of them; and, upon such compromise, to take possession of and receive all and any security or secu-

ties, property, goods, effects, claims, and demands, and preserve and keep the same; and also in all lawful ways to seize and take possession of any assets, property, and effects of said partnerships, or either of them, and to preserve and keep the same subject to our order; giving and granting unto our said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully, to all intents and purposes, as we might or could do if personally present, with full power of substitution and revocation; hereby ratifying and confirming all that our said attorney, or his substitute, shall lawfully do or cause to be done by virtue hereof.

In witness whereof we have hereunto set our hands and seals the —— day of May, in the year one thousand eight hundred and forty-eight.

WILLIAM TYACK, [L. S.]
LINDLEY MURRAY. [L. S.]

Sealed and delivered in the presence of—
AUG. F. SMITH.

UNITED STATES OF AMERICA,
City and county of New York, ss:

On the thirteenth day of May, one thousand eight hundred and forty-eight, before me personally appeared Augustus F. Smith, to me personally known, who being by me duly sworn, deposes and says, that he resides in the city of New York; that he knows William Tyack and Lindley Murray, the persons described in and who executed the above letter of attorney; that he saw them execute the same; and that he subscribed his name as a witness thereto.

In testimony whereof I have hereunto set my hand and affixed my seal of office, the day and year last above written.

[L. S.]

E. DELAFIELD SMITH,
Notary public.

B.

Know all men by these presents, that we, the subscribers, creditors of the firm of William Tyack & Co., in New York, and Stewart Newall & Co., in Galveston, Texas, composed of William Tyack, Stewart Newell, and Lindley Murray, have jointly and severally made, constituted, and appointed, and by these presents do jointly and severally make, constitute, and appoint, Ulysses B. Brewster, Simeon Draper, junior, and Charles B. Spicer, of the city of New York, jointly, or any or either of them, severally our and each of our attorneys and attorney, for us and in our name, place, and stead, jointly and severally, but to our respective use, to demand, recover, and receive all and singular the respective sum and sums of money now due, payable, or coming to us, or which shall hereafter become due, payable, or coming to us, respectively, from said firm of Wm. Tyack & Co., and Stewart

Newell & Co., or from either of them, on promissory note or notes, book account, or otherwise; and to compromise and agree in and about the same, and to accept and receive any goods, wares, merchandise, assets, money, securities, or otherwise, for the whole, or a portion of said respective sum and sums of money, in full satisfaction and discharge of the same, or otherwise; and to grant any respite in respect to said respective sum and sums of money, or any part thereof, as to our said attorneys or attorney may seem prudent; and suitable releases, acquittances, absolute or conditional, or any agreement in respect to said sum and sums of money respectively, in our respective names; and, as our respective deeds, to make, seal, and deliver to the said firm of William Tyack & Co., and Stewart, Newell & Co., or to any member or members of said firm; and all and every other act and acts, thing and things, whatsoever, needful or necessary to be done in and about collecting, securing, compromising, or agreeing about said several sum or sums of money, to make, do, and execute in our respective names, and as our respective acts, with the same validity as if made, done, and executed by us respectively; and to perform all and every other thing and things, act or acts, whatsoever, touching or concerning the premises above mentioned, as fully and effectually, to all intents and purposes, as we might or could do if personally present; and upon the receipt of any goods, wares, chattels, merchandise, securities, or otherwise, in such payment, compromise, or otherwise, to sell, realize, and dispose of the same at public or private sale, or otherwise, for cash, or upon credit, and to collect in and realize the same; and after payment of all charges and expenses of said attorneys touching the premises, to distribute the nett proceeds thereof among us, in proportion to the respective amounts of our said claims; and to institute and pursue unto final judgment any such proceedings, or otherwise, in any court that our said attorneys or attorney shall deem prudent in or about the premises aforesaid. And inasmuch as it may become necessary for our said attorneys or attorney to substitute one or more attorneys or attorney under them in the premises, we hereby respectively give and grant, to our said attorneys or attorney, full power and authority to substitute one or more attorneys or attorney under them, clothed with all or any of the powers and authority hereinbefore granted, and the same to revoke; hereby giving and granting unto our said attorneys or attorney, full power and authority to do and perform all and every act and thing, whatsoever, requisite and necessary to be done in and about the premises, as fully, to all intents and purposes, as we might or could do respectively if personally present, with full power of substitution and revocation; hereby ratifying and confirming all that our said attorneys or attorney, or their or his substitutes or substitute, shall lawfully do or cause to be done by virtue hereof.

In witness whereof we have hereunto set our hands and seals, the twenty-first day of April, in the year one thousand eight hundred and forty-eight. HAGGERTY, DRAPER & JONES, [L. S.]
EGLESTON & BATTELL, [L. S.]

For LEE & BREWSTER,
A. B. BREWSTER, [L. S.]
AUSTINS & SPICER, [L. S.]
TROWBRIDGE, DWIGHT & Co., [L. S.]
GA. TROWBRIDGE, [L. S.]
C. J. RICHARDS, [L. S.]
CHARLES CARTLIDGE & Co., [L. S.]
NEW YORK & SAUGERTIES WHITE LEAD Co., by F. H. RUDD [L. S.]
JOB CHANDLER & FOSTER, [L. S.]
JAUDONS & MASON, [L. S.]
JOHN GOULD, [L. S.]
CROMWELL, HAIGHT & Co., [L. S.]
SPEAR & RIPLEY, [L. S.]
DOREMUS & NIXON. Subject to any arrangement our agent may have made. [L. S.]

Sealed and delivered in presence of—
JNO. ATWOOD, as to
HAGGERTY, DRAPER & JONES,
EGLESTON & BATTELL, for
LEE & BREWSTER,
AUSTINS & SPICER.
A. B. BREWSTER,
TROWBRIDGE, DWIGHT & Co.,
GA. TROWBRIDGE,
CHARLES CARTLIDGE & Co.,
NEW YORK AND SAUGERTIES WHITE LEAD Co., by F. H. RUDD,
JOB CHANDLER & FOSTER,
JAUDONS & MASON,
JOHN GOULD,
CROMWELL, HAIGHT & Co.,
E. DELAFIELD SMITH, as to
C. T. RICHARDS,
SPEAR & RIPLEY,
DOREMUS & NIXON.

UNITED STATES OF AMERICA,
City and county of New York, ss.

Be it known, that on the twelfth day of May, one thousand eight hundred and forty-eight, before me, E. Delafield Smith, a notary public in and for the State of New York, duly commissioned and sworn, dwelling in the city of New York, came John Attwood, with whom I am personally acquainted, who, being by me duly sworn, deposes and says: That he resides in the city of New York; that he saw S. Draper, junior, for the firm of Haggerty, Draper & Jones; Jos. Battell, for the firm of Eggleston & Battell; A. B. Brewster, for the firm of Lee &

Brewster; C. B. Spicer, for the firm of Austins & Spicer; A. H. Trowbridge, for the firm of Trowbridge, Dwight & Co.; G. A. Trowbridge; C. Cartlidge, for the firm of Charles Cartlidge & Co.; H. F. Rudd, for the New York and Saugerties White Lead Co.; Job Chandler, for the firm of Job Chandler & Foster; C. B. Jaudon, for the firm of Jaudons & Mason; John Gould; and David Cromwell, for the firm of Cromwell, Haight & Co., execute the above letter of attorney; that he knew them to be the persons described in, and who executed, the said letter of attorney; and that he subscribed his name as a witness thereto.

On the same day appeared before me. C. J. Richards; G. B. Ripley, for the firm of Spear & Ripley; and T. C. Doremus, for the firm of Doremus & Nixon; known to me to be the persons described in, and who executed, the above letter of attorney, and acknowledged that they had executed the same as their act and deed.

In testimony whereof I have hereunto subscribed my name, and affixed my seal of office, the day and year last above written.

[L. S.] E. DELAFIELD SMITH,
Notary public.

C.

To all whom these presents shall come, Ulysses B. Brewster, Simeon Draper, junior, and Charles B. Spicer, of the city of New York, send greeting.

Whereas the creditors of the firm of William Tyack & Co., in New York, and Stewart Newell & Co., of Galveston, Texas, composed of William Tyack, Stewart Newell, and Lindley Murray, by their certain letter of attorney, a copy whereof is hereto annexed, did constitute us jointly, or each or any of us severally, for the purposes and with the powers in the same letter of attorney at large contained:

Know ye, that we, the said Ulysses B. Brewster, Simeon Draper, junior, and Charles B. Spicer, by virtue hereof, and of the power of substitution in said letter of attorney appearing, have substituted and deputed, and do substitute and depute, William E. Warren, of the city of New York, to be the sufficient and lawful attorney of the said creditors, with all and every power and authority of acting in the name, stead, and to the use of the said creditors, granted to us by the said letter of attorney, which we can lawfully exercise and delegate; hereby ratifying and confirming whatsoever the said William E. Warren shall lawfully do in the name of the said creditors, or in our name as attorneys to the said creditors, to their use by virtue of these presents, and the power of substitution in said letter of attorney contained.

In witness whereof we have hereunto set our hands and seals, the day of May, A. D. one thousand eight hundred and forty-eight.

A. B. BREWSTER, [L. S.]
S. DRAPER, JR., [L. S.]
CHARLES B. SPICER. [L. S.]

Sealed and delivered in presence of—
AUGS. F. SMITH.

UNITED STATES OF AMERICA,
City and county of New York, ss.

Be it known, that on the twelfth day of May, one thousand eight hundred and forty-eight, before me, E. Delafield Smith, a public notary in and for the State of New York, duly commissioned and sworn, dwelling in the city of New York, personally came Augustus F. Smith, with whom I am personally acquainted, who being by me duly sworn, deposes and says: That he resides in the city of New York; that he saw Ulysses B. Brewster, S. Draper, junior, and Charles B. Spicer execute the above letter of attorney; that he subscribed his name as a witness thereto; and that he knew the said Ulysses B. Brewster, S. Draper, junior, and Charles B. Spicer to be the persons described, and who executed the said letter of attorney.

[L. S.] In testimony whereof I have hereunto subscribed my name, and affixed my seal of office, the day and year last above written.

E. DELAFIELD SMITH,
Notary public.

D.

NEW YORK, *May 8th*, 1848.

Mr. WM. E. WARREN, *New York*.

SIR: The undersigned, legal representatives of sundry creditors of Stewart Newell & Co., of Galveston, Texas, and William Tyack & Co., New York, having placed in your hands a power of attorney, which will enable you to act for them, desire you to be governed by the following instructions:

1st. On your arrival in Galveston you will consider yourself as bound by the instructions of Capt. Tyack, and in no way intimate a doubt as to the truthfulness of the statement presented to the creditors, which is in substance as follows:

Debts due to sundry creditors—

For merchandise bought on a credit - - -	$14,786 47
Amount of merchandise on hand - - -	18,800 00
Surplus - - -	$4,013 53
To this add merchandise not included in the above statement bought in New Orleans for cash by Mr. Newell, and composing the full amount of his capital as per articles of agreement between Capt. Tyack, S. Newell, and Lindley Murray - - - - -	5000 00
	$9,013 53

2d. Should this statement be correct, and it is evident on examination that Mr. Newell has been governed by prudential action, as has been stated, and held in his possession all the merchandise and effects

of whatever description from fear of disposing of them on a credit, and thereby disabled in the prompt fulfilment of the engagements of the concern; we shall expect you to enter into a conference in reference to what action will be most advisable under the circumstances for the future disposition of the goods and ultimate liquidation of the indebtedness.

3d. We expressly request you to make no immediate disposition of the goods by which any material loss may accrue to the parties in interest, provided Mr. Newell should deem it for our mutual interest to place the merchandise in your hands as trustee for the creditors or Capt. Tyack.

4th. We wish, and in fact agree, that no action shall be taken which shall place the property beyond the reach of Capt. Tyack, who is ready to have it judiciously disposed of at the best point it can be, so as to go as far as it will toward the payment of his just creditors. We consider you as his and our agent to act for him and us, as the exigencies of the case may require. If it shall appear that Mr. Newell has acted in good faith throughout, to acquiesce in any reasonable request to continue the business they have commenced by any facility the creditors can give in reason, and with the security of some confidential party to join in the future direction of the assets. This we deem as not only prudent but wise. Mr. Newell has undoubtedly become alarmed, and unless he is supported by some person in the future management of the affairs he may become worried and discouraged, and may by continuing this inaction not only suffer himself, but inflict an unintended injury upon us, his creditors, as well as his partners.

5th. Should it turn out that, contrary to the opinion, hope, and expectation of Capt. Tyack and ourselves, that Mr. Newell has taken a course different from the one heretofore mentioned, and has, in utter disregard of all agreements and understandings with his partners and ourselves, appropriated this property to any other end than the establishment of a regular mercantile business, and the property can be sufficiently identified to get legal hold of it in the name of the partners here for the joint benefit of partners and creditors here, you will not hesitate to take prompt and efficient steps to recover the same and place it in such safe position, well insured and protected, as you may deem entirely secure, and return home with a complete statement of your labors. If you believe his intentions have been honest and honorable, do by him as you would under the same circumstances have others to do to you. If, on the contrary, you are convinced that he is acting or has acted so as to place his partners and creditors at defiance, and intends to commit or has committed any fraudulent action, your action will be such as in your judgment will be best to secure the interests of his partners and creditors.

6th. We especially wish you to understand that we desire no wanton sacrifice of property for the immediate payment of the whole or a portion of our claims. We would go far to preserve every dollar that can be saved for the benefit of Capt. Tyack, who, if he has been deceived

by Newell, must be utterly ruined by his misplaced confidence, and who is so far advanced toward the close of life as to excite the best interests of those in whose hands he is.

S. DRAPER, Jr.
A. B. BREWSTER,
CHARLES B. SPICER,
Committee of creditors.

I entirely approve of this letter of instructions.

WILLIAM TYACK.

E.

Capt. WM. TYACK.

MY DEAR SIR: I have read your last three letters to our friend Newell with heartfelt sorrow.

You are well protected here, and need not be alarmed as to the final result of every thing.

The stock has not been reduced more than three thousand dollars, and is all in good order.

Mr. Newell has bought three hundred and twenty bales of cotton, laying on the Trinity river, at Swarthout and Cincinnati; we pay for it on delivery on board the steamer by an order on the store in Galveston; the only risk we take is in getting it down; two steamers, the McKinney and Reliance leave here this afternoon, and I am going up in one of them to get the cotton. We have the samples in the store, and is fully fair; it will cost us nett 6 c. landed here. It shall be shipped forthwith to you. I feel for you the deepest sympathy; Mr. Newell is almost crazy, but he takes care of the property; Mrs. Andrews is now darning an old vest for him, as he feels unwilling to take one out of the store. You have not misplaced your confidence in him, and let the business turn out as it may, he will hold you harmless; Mr. Edgar is under an erroneous impression, and it seems impossible to put him in the right path. He (Edgar) has received in all eight thousand dollars from Mr. Newell, and in this and a prior negotiation he made with Hubert of New Orleans, he is now dissatisfied, thinking a large amount has been paid in New York, and he has only received three thousand dollars. It would take a ream of paper to explain every thing to you, my dear friend, but you may lay your head upon your pillow and sleep with the positive certainty that in your old age you shall neither be mortified or disgraced.

The claim of Alexander Edgar is good beyond a peradventure, and by next mail I hope to send you documentary evidence of it from him and Franklin. We trade for nothing but cotton, hides, or money. Rely on it, you shall be protected in every way; friend Newell will not see this letter. Mrs. Andrews will remain here during the summer on your account, as she thinks that she can watch the movements of all

and every thing. She wishes to be remembered to you especially. Mrs. Newell will come on with me or Mr. Newell. I am bound to come by sea on account of my life assurance, and Mrs. Newell does not like to go [to] sea. We are all delightfully situated here, and are only affected on account of your anxiety about the payments for the goods, which nothing but the elements can prevent. My most fervent aspirations for your health and happiness.

God bless you, adieu.

S. B. ANDREWS.

Galveston, April 15th, 1848.

F.

GALVESTON, *April* 15, '48.

Capt. WM. TYACK:

Your several favors are received, and only in time to hastily say to you, [they] will be fully answered by next mail, and I trust will soon put to rest all your fears upon the subject of our liabilities, and to say how my feelings are excited could not be contained in a letter written hastily; therefore to do so fully, to-morrow is Sunday, it shall be devoted to all subjects of interest to you. I say to you, because I have no care for myself, you are my greatest care, and to relieve your mind at any sacrifice, this shall be done; but, my dear friend, let not fear operate so as to destroy, in the least, that kind feeling now existing between us. I can and will save you; I alone am to meet the worst, not you; I have property; it shall be used to save you and your feelings. Time does not permit more now than to say, that in my next you will find evidence of my care in the matter. I have all the goods, and will do as you advise, and which was my own view of the case. The business is safe, so is Edgar's matter, so *is* all our interests.

I have not lost Edgar's or Franklin's confidence, nor can I; all is well; to-morrow Mr. Edgar meets me to have all arranged; he spent all [the] morning with me on the subject; just left me in a very good humor; will do all that is requisite. Franklin is to see me also, and arrange a letter as required. The rivers above are on the rise, and 2 steamboats leave to-morrow for the Trinity to bring down the cotton. I have advanced a portion on some quantity that will be down the first boat, and a bill of lading will be forwarded you immediately. Providence has seen fit to delay our commercial affairs this season; his will be done; I have a hope in his kindness to favor us at last, and trust you will again cheer up under all circumstances. I ask but health, and you as a friend, to do all I have promised. I will write Mr. Talmadge a reply to his letter just received, and trusting all will be satisfactory and go on well. Edgar's case is good, and will, I think, be tried in next month.

In haste, still yours,

S. NEWELL.

And afterwards, to wit, on the 5th day of August, A. D. 1848, the complainants, by their attorneys, *and* filed their motion for an injunction, in the words and figures following, to wit:

UNITED STATES DISTRICT COURT, *District of Texas.*

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss. } In equity.

And now at this day, that is to say, on the 5th day of August, A. D. 1848, come the complainants, by their solicitors and counsel, and move this honorable court for an injunction in this cause, according to the prayer in the bill of complaint; and for such other and further rule or order as the court may deem proper in the premises. Which motion will be founded on the bill of complaint and affidavits filed on the part of the complainants in the above cause.

MERRIMAN, ALLEN, SHERWOOD & WAGNER,
Solicitors and of counsel for complainants.

August 5th, 1848.

And afterwards, to wit, on the 17th day of August, A. D. 1848, came on to be heard the motion of defendants to set aside and annul the order appointing a receiver in this cause; whereupon the court made the following orders, that is to say:

WILLIAM TYACK et al.
vs.
STEWART NEWELL et al.

This day came the parties, by their solicitors; and defendants, by their solicitors, move the court that the order for the appointment of a receiver, heretofore made, may be annulled, vacated, and set aside; which motion, upon full argument, was overruled by the court.

SAME
vs.
SAME.

This day came the parties, by their solicitors, and the defendants, by solicitors, and move the court that the goods and merchandise of the late firm of Stewart Newell & Co., now in the custody of N. B. Yard, receiver, be re-delivered to defendant S. W. Doss, as the bona fide purchaser of the same; which motion, upon full argument, and being fully understood by the court, was overruled.

And afterwards, on the 18th day of August, A. D. 1848, the defendant, S. W. Doss, by his solicitors, filed the following motion, in words and figures as follows, to wit:

In the United States district court, for the district and State of Texas.
In chancery.

WM. TYACK AND LINDLEY MURRAY
vs.
STEWART NEWELL AND STEPHEN W. DOSS.

In this cause the defendant, Stephen W. Doss, by his solicitors, A. P. Thompson and O. F. Johnson, esqrs., moves the court to order, that the complainants file bond with security, in terms to be directed by the court, conditioned for the payment of all damages which may accrue to said defendant in consequence of the merchandise in controversy being taken out of his possession and placed in the hands of a receiver at the instance of complainants, provided it shall appear by final decree of this honorable court that the complainants cannot sustain their said suit, and had no right to the appointment of said receiver.

A. P. THOMPSON,
O. F. JOHNSON,
Solicitors for Doss, defendant.

August 18th, 1848.

And afterwards, on the same day, to wit, on the 18th day of August, A. D. 1848, S. W. Doss, one of the defendants in this cause, by his solicitors, filed the following motion, to wit:

In the United States district court, for the district and State of Texas.
In chancery.

WM. TYACK AND LINDLEY MURRAY
vs.
STEWART NEWELL AND STEPHEN W. DOSS.

In this cause, the defendant, Stephen W. Doss, moves the court to order that the goods taken out of his possession by the receiver heretofore appointed in this cause, and now in the hands of said receiver, be restored to this defendant upon his entering into bond with security to have the same forthcoming, or their value in money, to abide the final decree in said cause, and to pay all sums which may be recovered against him in said final decree, or in such other terms as the court may direct.

A. P. THOMPSON,
O. F. JOHNSON,
Solicitors for Doss, defendant.

August 18th, 1848.

And afterwards, on the same day, that is to say, on the 18th day of August, A. D. 1848, the defendant, Doss, by his solicitors, filed his petition for a new or another hearing upon motions heretofore filed, which petition is in words and figures as follows, to wit:

In the United States district court, for the district and State of Texas.
In chancery.

WM. TYACK AND LINDLEY MURRAY
vs.
STEWART NEWELL AND STEPHEN W. DOSS.

In this case the petition of the defendant, Stephen W. Doss, by his solicitors, A. P. Thompson and O. F. Johnson, esqrs., respectfully represents, that he is advised that at the trial of his motions and applications heretofore tried in said cause, some very important testimony in his behalf was not submitted to the court, and that several grounds in support of said motions were omitted in argument. He states that he is advised that if said testimony were heard, and the said motions allowed to be further argued, a different decision would be given by the court. He refers to the accompanying affidavit to show the said testimony in part. He therefore prays and moves this honorable court to grant a new trial and rehearing of said motions.

A. P. THOMPSON,
O. F. JOHNSON,
Solicitors for Doss, defendant.

August 18th, 1848.

And afterwards, on the same day, the defendant, Stephen W. Doss, by his counsel, filed the following motion, to wit:

In the United States district court, for the district and State of Texas.
In chancery.

WM. TYACK AND LINDLEY MURRAY
vs.
STEWART NEWELL AND STEPHEN W. DOSS.

In this cause the defendant, Stephen W. Doss, by his solicitors, A. P. Thompson and Ovid F. Johnson, esqrs., moves the court that the said cause be set down for trial on Monday, the 21st day of August instant, or on some other early day of the present term, as by the honorable court may be deemed convenient.

A. P. THOMPSON,
O. F. JOHNSON,
For defendant, Doss.

August 18th, 1848.

And afterwards, to wit, on the 19th day of August, A. D. 1848, the motion of complainants for an attachment against Peter MacGreal came on to be heard. Whereupon the court made the following order, to wit:

WILLIAM TYACK et al.
vs.
NEWELL AND DOSS.

This day came the parties, by their counsel; and complainants,

by their counsel, moves the court that Peter MacGreal be attached for a contempt of this court for refusing to deliver up to the receiver, N. B. Yard, the books, invoices, and memorandums of the goods, chattels, and credits of said Stewart Newell & Co., in his possession, or under his control, unless he show good cause to the contrary. Upon hearing and free argument of counsel, and being fully understood by the court, it is ordered that the books of Stewart Newell & Co., in the hands of said Peter MacGreal, or Stephen W. Doss, be delivered to the clerk of this court.

And afterwards, to wit, on the twenty-first day of August, A. D. 1848, the motion of complainants for an injunction in this cause came on to be heard. Whereupon the court made the following order, to wit:

TYACK AND MURRAY
vs.
NEWELL AND DOSS.

This day came the parties, by their counsellors; and complainants, by their counsellors, move the court for an injunction in this cause, according to the prayer of the bill of complaint; which motion, after argument and mature consideration of the court, was granted, upon condition that complainants enter into bond and security in [the] full sum of twenty thousand dollars, with the usual condition.

And afterwards, on the same day, to wit, on the twenty-first day of August, A. D. 1848, the court made the following order, that is to say:

TYACK AND MURRAY
vs.
NEWELL AND DOSS.

It is ordered that the petition and claim of J. F. Tyson in this cause be referred to the master in chancery of this court, to ascertain the facts of the same, and final disposition.

And it was, on the same day, to wit, on the 21st day of August, A. D. 1848, further ordered in this cause by the court as follows, to wit:

SAME
vs.
SAME.

The motion entered *entered* 29th July, 1848, by defendants continued.

And afterwards, to wit, on the 22d day of August, A. D. 1848, the master in chancery, to whom it was referred to report upon the petition and claim of J. F. Tyson, submitted his report in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District of Texas.

TYACK AND MURRAY
vs.
NEWELL AND DOSS.

The undersigned master in chancery, to whom was referred the petition and intervention of J. F. Tyson, claiming certain cutlery which is set forth in a bill of particulars annexed to his said petition, of which he, the said Tyson, claims to be the consignor and owner of said cutlery, begs leave to report, that the master is satisfied that said Tyson is the consignor and owner of said bill of cutlery as set forth in his petition, and that the same be delivered to the said Tyson, or his agent, free of all costs, except that of this motion, freight, and charges.

Which is most respectfully submitted.

THOMAS BATES,
Master, &c.

Galveston, August 22, 1848.

J. F. Tyson, esq., Dr.

To S. Newell & Co.,

To freight, storage, and cartage on invoice cutlery, hardware, and sundries, per ship S. F. Austin - - - - $2 16

Galveston, August 22, 1846. Entering motion, 50; judgment on motion, $1; master's report, $1 - - - 2 50

And afterwards, to wit, on the 22d day of August, the report of the master in chancery upon the claim of J. F. Tyson was read and filed; whereupon the court made the following order, to wit:

TYACK AND MURRAY
vs.
NEWELL AND DOSS.

The report of the master on petition and claims of J. F. Tyson approved, and the bill of cutlery therein specified be delivered to said claimant, or his agent, upon his, Tyson's, paying the costs of this motion, and bill of freight and charges on said bill of cutlery.

And afterwards, to wit, on the same day, (August 22d, 1848,) the court made the following orders in this cause, in words and figures as follows, to wit:

SAME
vs.
SAME.

This day came the parties, by their counsellors; and defendant, Doss, by counsel, moves the court to order that complainants file bond, with security conditioned for the payment of all damages which may accrue to said defendant in consequence of the merchandise in controversy being taken out of his possession and placed in the possession

of the receiver, in the event of complainants failing in this suit; which motion, upon full argument and upon mature consideration of the court, was overruled.

SAME
vs.
SAME.

This day came the parties, by their counsellors; and defendant, Doss, by counsel, moves the court to order that the goods taken out of this defendant's possession by the receiver, be returned to said defendant's possession, upon his entering into bond with security to have the same forthcoming, or their value in money, to abide the final decree in said cause; which motion, upon argument, and the same being fully understood by the court, was overruled.

SAME
vs.
SAME.

This day came the parties, by their counsellors; and defendant, Doss, by his counsel, moves the court to grant a new trial and rehearing of the motions heretofore made in this cause by defendants, and decided against them by the court, for reasons and causes set forth in this motion; which, upon argument, and full and perfect understanding by the court, was overruled.

TYACK AND MURRAY
vs.
NEWELL AND DOSS.

This day came the parties, by their counsellors, and the defendant, Doss, by his counsel, moves the court that the said cause be set down for trial on Monday, the 21st day of August, instant, or some other day of the present term, as the court may deem convenient; which motion, upon hearing, was considered by the court, that it had no power to grant said motion, the complainants refusing to assent to it. It is therefore overruled.

And afterwards, to wit, on the twenty-third day of August, A. D. 1848, upon suggestion of counsel, the court made the following order, to wit:

TYACK AND MURRAY
vs.
NEWELL AND DOSS.

This day came the parties, by their counsel, and upon the suggestion ore tenus of defendants' counsel, it is ordered that the receiver, N. B. Yard, heretofore appointed and given bond before Stephen W. Doss, was made a party defendant to this cause for the purpose of protecting the rights of said Doss; that said receiver be required to give a new bond in the sum of twenty thousand dollars, and that the securities be required to justify before the master.

And afterwards, on the same day, that is to say on the 23d day of August, A. D. 1848, the receiver, N. B. Yard, heretofore appointed *appointed* in pursuance of an order of the court, tendered a bond in the words and figures following, to wit:

THE UNITED STATES OF AMERICA.
District of Texas.

Know all men by these presents, that we, N. B. Yard, Albert Ball, and Stephen Kirkland, of the city of Galveston, within the district of Texas, are held and firmly bound unto the President of the United States in the sum of twenty thousand dollars, lawful money of the United States, to be paid to the said President, his successors in office, or whomsoever he or they shall direct; for which payment we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the 23d day of August, A. D. 1848.

Whereas by an order of the district court of the United States aforesaid, for said district, and the proceedings therein, the said N. B. Yard has been duly appointed receiver in a certain cause instituted in the said court by William Tyack and Lindley Murray, complainants, against Stewart Newell and Stephen W. Doss, defendants, of and concerning the co-partnership property of Stewart, Newell & Co.

Now the condition of this obligation is such, that if the said Yard shall well and truly and faithfully perform the trusts and office of receiver in the said cause, and shall conform to such directions as the said court may from time to time give, touching the disposal and management of the property taken or coming into his possession as such receiver, then this obligation to be void; otherwise to remain in full force and virtue.

N. B. YARD, [SEAL.]
ALBERT BALL, [SEAL.]
STEPHEN KIRKLAND. [SEAL.]

Witness—F. H. MERRIMAN.

And afterwards, to wit, on the twenty-fourth day of August, A. D. 1848, the complainants, by their counsel, filed the following motion, that is to say:

DISTRICT COURT OF THE UNITED STATES,
District of Texas.

WILLIAM TYACK and Lindley Murray
v.
STEWART NEWELL and Stephen W. Doss. } In equity.

F. H. Merriman and Sherwood and Wagner, of counsel for complainants in the [above] entitled cause, move the honorable court to name Edgar S. Van Winkle and George A. Halsey, of the city and State of New York, commissioners to take testimony and depositions

in the above entitled cause, and to order the party taking out the commission upon interrogatories filed, may take it out for any one or more of the persons above named as shall seem preferable, and that the commission may issue under the test of the clerk of the court and seal alone.

August 23d, 1848.

MERRIMAN,
SHERWOOD, and
WAGNER.

And afterwards, to wit, on the twenty-fourth day of August, A. D. 1848, the complainants, by their counsel, filed their replication to the answers of the defendant, Doss; which replication is in the words and figures following, to wit:

UNITED STATES DISTRICT COURT,
District of Texas.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss. } In equity.

The replication of William Tyack and Lindley Murray, complainants, to the several answer of Stephen W. Doss, defendant.

These repliants, saving and reserving unto themselves all and all manner of benefit and advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto say, that they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied to by these repliants; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct; and humbly pray as in and by their said bill of complaint they have already prayed.

MERRIMAN, SHERWOOD & WAGNER,
Solicitors and of counsel for complainants.

And afterwards, on the same day, to wit, on the 24th day of August, A. D. 1848, the complainants, by their counsel, filed their replication to the answers of the defendant, Newell; which replication is in the words and figures following, to wit:

UNITED STATES DISTRICT COURT,
District of Texas.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss. } In equity.

The replication of William Tyack and Lindley Murray, complainants, to the several answer of Stewart Newell, defendant.

These repliants, saving and reserving unto themselves all and all manner of benefit and advantage of exception to the manifold insufficiencies of the said answer, for replication thereto say, that they will aver and prove their said bill to be true, certain, sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied to by these repliants; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct; and humbly pray as in and by their said bill of complaint they have already prayed.

MERRIMAN, SHERWOOD & WAGNER,
Solicitors and of counsel for complainants.

And afterwards, on the twenty-fifth day of August, A. D. 1848, the court made the following order, in words and figures as follows, to wit:

TYACK and Murray
vs.
NEWELL and Doss.

This day came the parties by their counsellors, and complainants, by their counsel, move the court to name Edgar S. Van Winkle, George A. Halsey, and Richard B. Kimball, of the city and county of New York, commissioners to take testimony and depositions in this case, and to order the party taking out commissions upon interrogatories filed, may take it out for any one or more of the persons above named as shall seem preferable, and that the commission may issue under the test of the clerk and seal of court alone; which motion was, upon hearing, sustained.

And afterwards, to wit, on the 25th day of August, A. D. 1848, the complainants, by their counsel, filed the following motion; which motion is in the words and figures following, to wit:

UNITED STATES DISTRICT COURT,
District of Texas.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss. } In equity.

The court having awarded a writ of injunction in the above entitled cause against the defendants, the counsel for complainants move this honorable court that the said defendant, Stewart Newell, may be compelled by an order of the court to appear before Thomas Bates, a master of this court, and assign, transfer, and deliver over, under oath, all property, choses in action, or evidences of debt, belonging to the firm of "Stewart Newell & Co." into the hands of N. B. Yard, the

receiver appointed in this cause, and for such other and further order as the court may deem proper to grant.

MERRIMAN, SHERWOOD & WAGNER,
Sols. and of counsel for complainants.

And afterwards, to wit, on the 25th day of August, A. D. 1848, N. B. Yard, the receiver heretofore appointed in this case, filed his petition praying for an order of sale of goods, which petition is in the words and figures as follows, to wit:

UNITED STATES DISTRICT COURT,
District of Texas.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss. } In equity.

To the honorable the judge of the district court of the United States, for the district of Texas.

The petition of N. B. Yard, the receiver appointed in the above entitled [case,] respectfully showeth:

That the stock of goods taken into the possession of your petitioner, as such receiver in the above entitled cause, consists of a great variety of dry goods, hardware, groceries, boots and shoes.

That owing to the dampness of the atmosphere, and the common difficulty of keeping goods in the city of Galveston, a great portion of said goods will rapidly deteriorate in value, and some of them, as your petitioner apprehends, would become nearly valueless if suffered to remain on hand for any great length of time.

That the stock as a whole is much more suitable to the fall trade than any other, and that much prejudice and loss will be incurred if the goods are suffered to lie over without a sale until after the next term of this court. That the most favorable time for sale will be during the months of September and October.

That much expense will be incurred in keeping the said goods on hand, in the payment of storage, and in taking care of the same.

That your petitioner has been unable to effect insurance on the said goods, and fears to keep them on hand if they can be sold to advantage.

That goods of the description of those in the possession of your petitioner always greatly depreciate in value the longer they are kept on hand.

In consideration of which your petitioner prays that he may be permitted to sell the said goods, or such part of the same as it may be necessary or advantageous to sell, at public or private sale, and that also, if necessary or advantageous, he may be permitted to take the said goods to any market he may deem most advantageous for a sale. And your petitioners, &c. N. B. YARD.

Sworn and subscribed this 26th day of August, 1848, before me—
JOHN C. WATROUS.

And afterwards, on the same day, that is to say, on the twenty-fifth day of August, A. D. 1848, the receiver in this cause filed the following motion, to wit:

UNITED STATES DISTRICT COURT,
District of Texas.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss. } In equity.

The receiver appointed in this cause, N. B. Yard, on filing his petition, moves this honorable court for a rule or order allowing him, as such receiver, to sell any part or all of the goods, wares, and merchandise taken into his hands and possession as receiver in this cause, in accordance with the prayer in his said petition, or for such other order as the said court may deem proper to grant in the premises.

MERRIMAN, SHERWOOD & WAGNER,
Sols. and of counsel.

And afterwards, to wit, on the 26th day of August, A. D. 1848, the court made the following order, to wit:

TYACK & MURRAY
vs.
NEWELL & DOSS.

This day came the parties by their counsellors, and complainants, by counsel, move the court that defendant, Newell, may be compelled by an order of this court to appear before Thomas Bates, a master of this court, and assign, transfer, and deliver over, under oath, all property, choses in action, or evidences of debt belonging to the firm of Stewart Newell & Co. into the hands of N. B. Yard, the receiver appointed in this cause. It is ordered, upon hearing of this motion, that the same be sustained.

And afterwards, on the same day, to wit, on the 26th day of August, A. D. 1848, the following agreement of counsel was entered upon the minutes of the court in words and figures following, to wit:

TYACK & MURRAY
vs.
NEWELL & DOSS.

This day came the parties, by their counsellors, and agreed that the following testimony, heretofore taken in this cause before a commissioner, should be read as evidence on the final hearing of this cause, as follows, that of Samuel M. Williams, Joseph Emerson, Henry Journay, Gilbert Winne, (W. E. Warren, filed 9th August, 1848) John A. Settle, and John W. Harris, on part of complainants; that of James Webb, Henry B. Andrews, P. G. Merrett, L. Frosh, A. P. Thompson, H. Balwin, E. Glaverick, John D. Knight, John Warren, and C. Luder on part of defendants.

And afterwards, to wit, on the 26th day of August, A. D. 1848, and on the 15th day of January, 1849, for that time, the complainants filed their bond, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District of Texas.

Know all men by these presents, that we, William Tyack and Lindley Murray, of the city of New York, and George Ball, John H. Bennett, Alexander C. Crawford, of the city of Galveston, are held and firmly bound unto the President of the United States of America in the sum of twenty thousand dollars, lawful money of the United States of America, to be paid to the said President, his successors in office, or whomsoever he or they shall direct; for which payment we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the twenty-first day of August, A. D. one thousand eight hundred and forty-eight.

Whereas, by an order of the honorable the judge of the district court of the United States for the district of Texas, in a certain cause therein pending, in equity, in which William Tyack and Lindley Murray are complainants, and Stewart Newell and Stephen W. Doss are defendants, an injunction has been granted against the said Stewart Newell and Stephen W. Doss, enjoining and restraining them, and each of them, from doing and performing certain acts and things in the said writ of injunction particularly mentioned.

Now, therefore, the condition of this obligation is such, that if the above bounden obligors, their heirs, executors, administrators, or assigns, shall pay, or cause to be paid, all damages, costs, and charges which the said Stewart Newell and Stephen W. Doss, or either of them, shall sustain in consequence of the issuing the said injunction, in case the same shall be dissolved, and shall faithfully abide any decree or order of the said court in the said cause in which the said injunction is issued, then the above obligation to be void; otherwise to remain in full force and virtue.

WILLIAM TYACK, [SEAL.]
By W. C. WARREN,
Attorney in fact.
LINDLEY MURRAY, [SEAL.]
By W. E. WARREN,
Attorney in fact.
GEORGE BALL, [SEAL.]
JNO. H. BENNETT, [SEAL.]
A. C. CRAWFORD. [SEAL.]

Witness—
H. W. WAGNER.

And afterwards, to wit, on the fourth day of September, A. D. 1848, the following report of the commissioners appointed by the court

to examine the goods in controversy in this suit was returned into court and filed; which report is in the words and figures following, to wit:

UNITED STATES DISTRICT COURT,
District of Texas.

TYACK and MURRAY
vs.
NEWELL and DOSS.

Motion of complainants that the court shall order the receiver to make sale of the goods in his hands.

And now, to wit, this day of August, A. D. 1848, the court appointed Messrs. John H. Illies, William M. Sergeant, and Thomas M. League, to examine into the condition of the goods in the hands of the receiver in this case, to report upon the following points, to wit:

"Whether any part of said goods, &c., are of a perishable nature, and what part are of such nature; whether it is necessary or expedient to sell the same, or any part thereof, and what part?"

"Whether said sale should be for cash or a credit, and what credit; and whether it should be at public or private sale, to realize the most from the sale of said goods, &c.?"

"Whether a greater loss would be probably suffered from the retaining said goods in the hands of the receiver till the final disposition of this case than from an immediate sale by the receiver?"

And now, to wit, this fourth day of September, 1848, the said commissioners make and file the following report, in pursuance to the foregoing appointment, to wit:

To the Hon. JOHN C. WATROUS,
Judge of the United States court.

We, the undersigned, appointed by your honor to examine and report upon the condition of the goods, wares, and merchandise in the hands of N. B. Yard, receiver in the case of Tyack and Murray vs. Newell and Doss, respectfully represent, that we have carefully and deliberately examined the said goods, and report:

1st. That *that* the said goods are in good preservation, with the exception of about 30 hides, 50 lbs. rice, 6 pieces prints, and one barrel molasses, which should be sold immediately to prevent total destruction; we would add two pieces mosquito netting, as they will be soon out of season.

2d. That the following goods are of woollen fabric, and should be sold in a reasonable time to prevent deterioration, as moths are already in some of the same, namely:

[T] ‡
& Co. 3, 1 bale, containing blue blankets.
" 33, 1 " " " "
" 34, 1 " " green "
" 35, 1 " " white "

[T] ‡
& Co. 36, 1 bale, containing white blankets.
" 21, 1 case, " assorted "
" 22, 1 " " " "
" 23, 1 " " white "
" 4, 1 " " 69 assorted coats and 33 pairs pantaloons.
" 7, 1 " " 35 " " 38 "
" 5, 1 " " shirts, coats, and pantaloons.
" 1, 1 " " woollen hose and half hose.
" 2, 1 " " blankets and kerseys.
" 16, 1 " " comforts, hoods, and pellerines, &c.
" 17, 1 " " 13 pairs white, 14 pairs red flannels, 7 robin hood plaids, and 5 pieces sattinets.

3d. That there are about 700 pieces of dark ground colored prints, for the fall and winter season, which should be sold before the market can be supplied with new styles, &c., from the north and Europe, when they would decline in value.

4th. The entire stock, with small exceptions, is calculated for the fall and winter trade, and ought to be sold at public auction on or about the 15th of October next, and publication of the same be made in the Galveston, Houston, Victoria, and Corpus Christi newspapers, to invite competition.

5th. That the terms of sale should be as follows:

For all sums under $100, cash;
On all sums over $100, and not over $300, 90 days' credit;
On all sums over $300, and not over $500, 4 months' credit;
On all sums over $500, on 6 months' credit.

The notes to be given jointly and severally, with two or more sureties, with ample power to confess judgment when due, if not paid, attached to each note; or with good personal solvent security, and a power of attorney coupled with an interest, from all parties, to confess judgment in default of payment.

6th. That the goods ought to be removed to a good brick store, where they are better secured against fire, &c. It is our opinion that, excepting the woollen goods, rice, hides, and a few other articles mentioned, the goods might be safely kept till the final disposition of the case; but we believe more could be realized from a sale of said goods, as is above suggested, than by keeping them till the case is decided, and making sale of the same after that time.

Galveston, September 4, 1848.

JOHN H. ILLIES,
W. M. SERGEANT.

I concur in all matters contained in the foregoing report, with the exception, I believe it best for all parties concerned that all sums under five hundred dollars should be cash, and all over that amount on a credit of six months.

THOS. M. LEAGUE.

To our fee for examining the goods, wares, and merchandise in the hands of N. B. Yard, receiver, in the case of Tyack & Murray vs. Newell & Doss, at $10 per day for each, from the 26th August till this date, in all 7 working days $10 each, together - - $210 00
To negroes for labor on said goods - - - - - - 8 50

$218 50

Galveston, September 4, 1848.

JOHN H. ILLIES,
W. M. SERGEANT,
THOS. M. LEAGUE.

TYACK & MURRAY
vs.
NEWELL & DOSS.

It is agreed that the mode of selling the goods, &c., in the hands of N. B. Yard, receiver of S. Newell & Co., suggested in the report of the majority of the commissioners appointed to examine the same, shall be accepted by the court, in its order for the sale thereof, on this condition, that the advertisement for said sale shall be inserted in the papers on the first of October next, and that the complainants shall have the right, any time before ten days preceding said sale, to countermand it, except so far as respects the goods absolutely required to be sold on account of their perishable nature. The sale to be fixed for the first Monday of November next.

Galveston, Sept. 4, 1848.

F. H. MERRIMAN,
Sol. for complainant.
O. F. JOHNSON,
Sol. for defdts.

And upon the hearing of said report and agreement the court made the following order, to wit:

TYACK & MURRAY
vs.
NEWELL & DOSS.

Whereupon the court orders and directs the said parties agreeing and assenting thereto, as is shown by the accompanying agreement of this date, (4th Sept., 1848,) filed with the said report, and copied above, that the said N. B. Yard, receiver in this case, shall make sale of the hides, rice, molasses, 6 pieces of damaged prints and mosquito netting, as described in the foregoing report, immediately, on the best terms, and for the best price practicable to be obtained. The said Yard shall also, on or before the first day of October next, cause to be published in one newspaper, printed in Galveston, one in Houston, and one [in] Victoria or Port Lavaca, the sale of the remainder of the stock of goods in his hands, as receiver as aforesaid, to take place in the city

of Galveston on the first Monday of November next, specifying therein the general character and description of said goods, and the terms of sale thereof. The said goods shall be sold at public auction, and to the highest and best bidder therefor, on the following terms of payment, to wit:

For all sums under one hundred dollars, cash;

On all sums between one and three hundred dollars, 90 days' credit;

On all sums over three hundred dollars, and not over five hundred dollars, 4 months' credit;

On all sums over five hundred dollars, six months' credit.

All of said credits to be given for notes, payable at Galveston, to be secured by good solvent securities, who shall sign said notes as joint and several makers, and a power of attorney, coupled with an interest, to confess judgment to be given by all parties to each note respectively in default of payment.

Should the complainants refuse their assent to this sale as is provided for in the foregoing agreement, to which reference is herein made, they must, at least ten days before the first Monday of November, file written notice thereof in the clerk's office of this court, and notify the receiver, and the two defendants, Newell and Doss, of the same.

This order of sale being made with the assent of both parties, the right is expressly reserved to both to bring suits, or to obtain all other relief to which they would respectively have been entitled if this assent to said sale had not been given.

And afterwards, to wit, on the 4th day of September, A. D. 1848, the court made the following order, to wit:

It is ordered that all suits, motions, and orders not otherwise disposed of, be continued until the next term of this court, to be holden in the city of Galveston on the first Monday of December next.

JOHN C. WATROUS,
Judge D. C. D. T.

And afterwards, on the seventh day of September, A. D. 1848, the master in chancery, Thomas Bates, esqr., filed the following report in words and figures as follows, to wit:

TYACK AND MURRAY
vs.
NEWELL and DOSS. } Saturday, August 26th, 1848.

This day came the parties, by their counsel; and complainants, by counsel, moved the court that defendant Newell may be compelled by an order of the court to appear before Thomas Bates, a master of this court, and assign, transfer, and deliver over, under oath, all property choses in action, or evidences of debt belonging to the firm of Stewart, Newell & Co., into the hands of N. B. Yard, the receiver appointed in this case. It is ordered, upon hearing of this motion, that the same be sustained.

TYACK & MURRAY
vs.
NEWELL & DOSS.

To Joseph A. Swift, esqr., solicitor for Stewart *Stewart* Newell, one of the defendants in said cause.

Take notice, that there will be a hearing before me on a motion, and judgment thereon in said cause, a copy of which is hereto annexed, on the 8th day of September, 1848, at 10 o'clock, a. m., at my office in the said city of Galveston, at which time and place said Newell is hereby ordered to appear, and in compliance with the judgment of the court on said order, to assign over, under oath, to the receiver in said cause, all the assets, &c., as stated in said order.

THOS. BATES, *Master, &c.*

Sept. 7th, 1848.

On this seventh day of September, A. D. 1848, I served a true copy of the within on Joseph A. Swett, esqr., solicitor of Stewart Newell.

H. W. WAGNER.

Sworn to and subscribed before me, 8th Sept., 1848.

THOS. BATES, *Master, &c.*

Sept. 8th, 1848, 10 o'clock, a. m.

In accordance with the above notice, I was at the master's office, and the said Newell failed to appear and assign over, under oath, the assets as required by the order of court.

THOS. BATES, *Master, &c.*

And afterwards, to wit, on the eighth day of September, A. D. 1848, the complainants filed their deed of assignment to the receiver in this cause, which deed is in the words and figures following, to wit:

This indenture, made the 29th day of August, A. D. one thousand eight hundred and forty-eight, between William Tyack and Lindley Murray, of the city of New York, and Stewart Newell, of the city of Galveston, heretofore partners, doing business under the name, style, and firm of Stewart Newell & Co., of the first part, and N. B. Yard, of the city of Galveston, receiver of the estate and effects hereinafter referred to, appointed by the honorable the district court of the United States, for the district of Texas, (sitting in equity) of the second part. Whereas, in and by an order of the said district court, before the hon. John C. Watrous, judge thereof in a certain cause, wherein the said William Tyack and Lindley Murray, were complainants, and the said Stewart Newell was defendant, it was ordered, that the said Stewart Newell appear before Thomas Bates, a master of this court, and assign, transfer, and deliver over, under oath, all property, choses in action, or evidences of debt, belonging to the firm of Stewart Newell & Co., into the hands of N. B. Yard, the receiver appointed in this case; and whereas the said party of the second part has been duly appointed such

receiver, and has given and filed the requisite security pursuant to the rules and practice of the said court, and in accordance with the provisions of the orders of said court.

Now this indenture witnesseth, that the said parties of the first part in obedience to the said order, and in consideration of the premises aforesaid, and of one dollar to each of them in hand paid, by the said party of the second part, at or before the execution hereof, the receipt whereof is hereby acknowledged, have and each of them hath conveyed, assigned, transferred, and delivered over, and by these presents do, and each of them doth convey, assign, transfer, and deliver over, unto the said party of the second part (under the direction of the said master testified by his approval endorsed thereon) all and every the stock in trade, good will, estate real and personal, chattels real, moneys, outstanding debts, things in action, equitable interests, property and effects whatsoever and wheresoever, of, or belonging, or due to the said parties of the first part as partners of the said firm of Stewart Newell & Co., or to the said firm itself, and in which they or either of them as such partners, or the said firm, had any estate, right, title, or interest at the time of filing the bill of complaint in the above recited suit in the said district court, and which bill was filed on the tenth day of July last. And also all deeds, writings, leases, muniments of title, books of account, papers, vouchers, and other evidences whatsoever relating or appertaining thereto; to have and to hold the same unto him, the said party of the second part, as such receiver as aforesaid, and to his successors and assigns, subject to the *and* future order, direction, and control of the said district court. And for the better and more effectually enabling the said party of the second part, his successors and assigns, to recover and receive any or all the said stock in trade, estate, book debts, property, choses in action, effects hereby conveyed, assigned and transferred, they, the said William Tyack, Lindley Murray, and Stewart Newell, have made and appointed, and by these presents do make and appoint, the said N. B. Yard, the party of the second part, his successors and assigns, the attorney and attorneys of them, the said parties of the first part, in their names, or in the style of the said firm of Stewart Newell & Co., or of William Tyack & Co., to commence, continue, discontinue, and again bring perfect and carry out actions and suits, against any corporated company, firm, person or persons, for or on account of all or any part of the said estate, stock, property, book debts, choses in action or effects.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

WILLIAM TYACK, [L. S.]
By W. E. WARREN,
Attorney in fact.
LINDLEY MURRAY, [L. S.]
By W. E. WARRIN,
Attorney in fact.

Sealed and delivered in presence of—
F. H. MERRIMAN,
H. W. WAGNER.
To signatures of Tyack and Murray.

And afterwards, to wit, on the sixteenth day of October, A. D. 1848, the complainants, by their solicitors, entered the following notice in rule docket, in words and figures as follows, to wit:

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss.

In the United States district court, sitting as a court of equity.

To Joseph A. Swett, solicitor for Stewart Newell, and Ovid F. Johnson, solicitor for Stephen W. Doss, parties defendants in said cause.

Take notice, that we have this day filed in the office of the clerk of the United States district court, for the district of Texas, the foregoing interrogatories propounded to Willard Richardson and John Brock; and that we shall, on the 30th day of October, 1848, at the office of said clerk, apply to the judge of said court to appoint a commissioner, to whom a commission will issue, to take the answers of said witnesses to said interrogatories, on or before which time you will file cross interrogatories, if you see cause.

MERRIMAN, SHERWOOD & WAGNER.

GALVESTON, *October* 16*th*, 1848.

And afterwards, to wit, on the thirtieth day of October, A. D. 1848, the complainants, by their counsel, filed the following motion; which motion is in words and figures as follows, to wit:

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss.

In United States district court, for district of Texas. In equity.

Now comes F. H. Merriman, of counsel for the complainants in said cause, and moves the court to appoint some meet and suitable person to take the answers of Willard Richardson and John Brock to certain interrogatories filed by the complainants in said cause.

F. H. MERRIMAN,
One of sols. for compts.

And afterwards, to wit, on the fourth day of January, A. D. 1849, the complainants, by their solicitors, filed the following motions, in words and figures as follows, to wit:

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss.

United States district court, district of Texas. In equity.

And now, at this day, that is to say, on the 4th day of January, 1849, comes the complainants by their solicitors, and move the court that the bill of complaint in this cause be taken as confessed against the above named defendant, Stewart Newell, for neglecting or refusing to appear before the master, and assign and deliver over to the receiver in this cause the property of Stewart Newell & Co., according to the order of the court.

MERRIMAN, SHERWOOD & WAGNER,
Sols. for compts.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss.

United States district court, district of Texas. In equity.

And now, at this day, that is to say, on the 4th day of January, 1849, comes the complainants, by their solicitors, and move the court that the bill of complaint in this cause be taken as confessed against the defendant, Stephen W. Doss, for neglecting to deliver or deposit with the clerk of this court the books of account, &c., of Stewart Newell & Co., according to the order of this court.

MERRIMAN, SHERWOOD & WAGNER,
Sols. for compts.

THE STATE OF TEXAS,
County of Galveston.

In the district court of the United States, for the district and State of Texas.

TYACK & MURRAY
vs.
NEWELL & DOSS.

And now comes A. P. Thompson, agent and attorney in fact of the defendant, Stephen W. Doss, and applying for a continuance upon oath, says: That he has good reason to believe, and verily does believe, that negotiations are now pending (if not already consummated) between the plaintiffs and defendant, Newell, and all other persons interested in the firms of Wm. Tyack & Co., of New York, and Stewart Newell & Co., of Galveston, which will preclude any further right to prosecute the said suit against the defendant, Doss; that the said negotiations were commenced at the instance of the complainants and creditors of said firm, and notice of the pendency of the same given to said Doss too late to allow of his producing proof of the same at this term of the honorable court. This affiant further states, that he is credibly informed, and verily believes, that certain transactions have been had between the complainants and the said creditors in the courts of the

State of New York, by which the said complainants have lost all right to continue the prosecution of said suit against the defendant, Doss; and that properly authenticated copies of said proceedings would be material testimony to sustain a just defence on the part of the said Doss, but that the said Doss and this affiant were only informed of the said transactions and proceedings at too short a time before the present term of this honorable court to enable him by any diligence whatsoever to have had the authenticated copies in a condition to be offered in evidence at the trial of said cause, if brought on at this term. This affiant further states, that the defendant, Doss, cannot go safely to trial at this term of the court for the want of the testimony of John R. Spann, who is a material witness for the defence of said Doss, and is at present absent, without the procurement or consent of said Doss. The said Spann is a resident of Galveston county, and at present temporarily absent at Washington county; that this defendant has used due diligence to procure the attendance of said Spann, by causing him to be served with a subpœna to attend and testify in the cause; that he is confident all of the said testimony can be procured by the next term of the court, and that the application for a continuance is not made for the sake of delay, but justice.

A. P. THOMPSON.

Subscribed and sworn to by A. P. Thompson, on the 16th day of January, 1849, in open court.

JAMES LOVE, *Clerk.*

And afterwards, on the same day, to wit, on the 16th day of January, A. D. 1849, the defendants, by their solicitors, filed the following affidavit of J. D. Knight, in words and figures following, to wit:

In the United States district court, in and for the State and district of Texas.

THE STATE OF TEXAS,
Galveston county.

TYACK and Murray
vs.
NEWELL and Doss. } No.

And now comes Isaac D. Knight, who is agent of the defendant, Newell, and upon oath states that the plaintiffs and the creditors of the firm of Stewart Newell & Co., at New York, proposed to the defendant, Newell, through S. B. Andrews, inviting and pressing him to go on to New York, to compromise and arrange the matters in litigation in said cause; and that the said Newell has gone to New York for that purpose, and is now at New York making arrangements for the settlement of the said matters here in controversy. This affiant refers to the annexed copy of a letter of license or protection from the creditors of the said firms to the said Newell, in corroboration of this statement. This

affiant further states, that he has good reason to believe that the matters in this suit, disputed between the parties, will shortly be amicably settled, if not already settled at this time. Therefore, he says, that the said cause ought not to be tried at this time, until the parties can be heard from. He further states that the said defendant, Newell, cannot go safely to trial at this term of the court, for the want of the testimony of said Shelleck B. Andrews, formerly residing at Galveston, but now of New York. That the testimony of said Andrews is material to the defence of said Newell, and of the existence of said testimony, and its materiality the said Newell was not informed in sufficient time to enable him to procure the same at this term of the court by any diligence that he could have used. This affiant further states, he has recently learnt that certain proceedings have been had in the courts of the State of New York between the complainants and the creditors of the firms, copies of which would be material to the defence of said Newell, but the said Newell had not time to get said copies, properly authenticated to be used in evidence, soon enough for the trial if now brought on. This affiant is confident that the said Newell will be able to procure the said testimony by the next term of this honorable court, and that this application for a postponement of the trial is not made for unnecessary delay, but to enable the defendant to prove a just defence.

ISAAC D. KNIGHT.

Subscribed and sworn to in open court, on 15th January, 1849.

JAMES LOVE, *Clerk.*

To which affidavit of Isaac D. Knight is annexed a letter in words and figures following, to wit:

We, the subscribers, creditors of the firms of Stewart Newell & Co., of Galveston, Texas, and William Tyack & Co., of the city of New York, in consideration of agreements, stipulations, and negotiations now pending between us, the subscribers hereto and the firms aforesaid, and in the further consideration of one dollar, to us in hand paid, the receipt whereof is hereby acknowledged, do hereby bind ourselves not to prosecute, sue, hinder, delay, or otherwise interfere with said Stewart Newell for sixty days next succeeding his arrival in the city or State of New York, if he shall so long remain therein. That said Stewart Newell shall be at liberty to come from Galveston, in the State of Texas, to the city of New York, and to remain in the said city of New York, or in the city of Brooklyn, for the full space and term of sixty days after his arrival in either of said cities; and that said Newell shall be allowed to return to Galveston, in the State of Texas, after the expiration of said full term of sixty days, without suit, hindrance, delay, or prosecution, or any other interference whatever, from any or either of us, the subscribers hereto.

In consideration whereof we have hereunto signed our names this fifth day of December, A. D. 1848.

(Signed) HAGERTY, DRAPER & JONES,
AUSTINS & SPICER,

LEE & BREWSTER,
CHARLES CARTLIDGE & CO.,
EGGLESTON & BATTELLE,
JAUDONS & MASON,
C. J. RICHARDS,
SPEAR & RIPLEY,
DOREMUS & NIXON,
TROWBRIDGE, DWIGHT & CO.

These were the committee of creditors who appointed Warren under authority of all the creditors.

And afterwards, to wit, on the 17th day of January, 1849, on motion of defendants made in open court, the following order was made by the court, and entered upon the minutes thereof, in words and figures as follows, to wit:

TYACK & Murray
vs.
STEWART NEWELL and Stephen W. Doss. } 35.

On motion of defendants, by counsel, it is ordered, that the time for taking testimony be extended from three months from this date.

And afterwards, to wit, on the 15th day of February, A. D. 1849, the appraisers appointed in this cause filed their account for compensation in the words and figures following, to wit:

United States district court, December term, A. D. 1848.

WM. TYACK & Murray
vs.
STEWART NEWELL & Doss.

William M. Sergeant, Thomas M. League, and John Illies, who were appointed appraisers by the court in this cause to appraise the value of the property in the hands of the receiver, moves the court for an allowance for their services performed by them, as per account herewith filed, and their report returned into court, to be allowed out of the money now in the hands of the clerk of this court.

SAML. YERGER, *for motion.*

To 7 days' attendance in opening the goods, making an inventory and report in the above cause, *a* $10 per day each - - $210 00

THOMAS M. LEAGUE.

Sworn to and subscribed before me, this 15th February, 1849.

A. M. HUGHS, *Deputy Clerk.*

Upon which is the following endorsement, to wit: I acknowledge notice of this rule.

O. F. JOHNSON,
For S. W. Doss.
F. H. MERRIMAN,
Sol'r for complainants.

Feb. 15th, 1849.

And afterwards, to wit, on the 17th day of February, A. D. 1849, the motion of the appraisers heretofore appointed in this cause, for compensation, came on to be heard; whereupon, the court made the following order, to wit:

TYACK and Murray
vs.
STEWART NEWELL and Stephen W. Doss.

William M. Sergeant, Thomas M. League, and John Illies, who were appointed appraisers in this cause by a former order of this court, filed their account for compensation for their services, which was referred to James Love, master, to report.

And afterwards, to wit, on the 27th day of February, 1849, James Love, one of the masters of this court, to whom was referred the account of the appraisers heretofore appointed in this cause, submitted his report in words and figures foll[ow]ing, to wit:

TYACK & Murray
vs.
STEWART NEWELL, &c.

In pursuance of an order of court made on the 17th inst., referring to me the accounts of William M. Sergeant, Thomas M. League, and John Illies, appraisers of the goods in controversy between the above parties, I have proceeded to the examination of the accounts, the parties being present by their counsel; and after hearing the evidence introduced by the parties, beg leave to report:

That it is in proof that the appraisers were employed seven days each in the discharge of their duties during the business hours of the day; that they were competent to discharge the duties assigned them; that the weight of testimony is, that their services are worth ten dollars a day each; the testimony is referred to, marked 1, 2, 3. I therefore report, that each of the appraisers is entitled to the sum. All which is respectfully submitted.

JAMES LOVE, *Master.*

The following testimony was produced before the master, on the reference of the accounts of the appraisers appointed in this cause, and is referred to in said master's report as marked 1, 2, 3, to wit:

TYACK & Murray
vs.
STEWART NEWELL, &c.

Reference to the master upon the motion of appraisers, Wm. M. Sergeant, Thomas M. League, and John Illies, for compensation for services rendered.

Isadore Dyer being sworn—

Interrogatory 1st by master. What do you consider a fair and reasonable compensation per day, in the month of August, in the city of Gal-

veston, for competent persons to appraise and examine such goods as were in controversy between the parties to this suit?

Answer. From two to five dollars a day each.

Int. 2, by Mr. League. Would you be willing, if appointed by the court, to do such labor for the price stated?

Answer. I would in that month. I. DYER.

N. B. Yard being sworn—

In answer to the first interrogatory propounded to Isadore Dyer, says, that he would be willing to work at five dollars a day; that there are times and occasions when the work would be worth ten dollars or more; in fact cases might exist, when business pressed, that, if to be avoided, he would not be willing to do it for any price scarcely. He believes they were employed the time stated in the report. He believes, from his knowledge of business in Galveston, in July and August, when it is dull, five dollars a day is a fair compensation. They were employed during the business hours of the day. He took an inventory of the goods as receiver; does not recollect the number of days he was employed. He did not, in taking the inventory, make the examination whether they ought or not to be sold; but would suppose the labor of taking inventory greater than the labor of appraisement.

N. B. YARD.

H. W. Wagner, a witness for defendants, being sworn, states—

That he assisted Mr. Yard in taking the inventory of the goods, and believes they were employed seven days; that less labor is required to make appraisement than to take an inventory of the goods.

Cross examined.

In taking inventory most of pieces were not opened—taking the number of yards as marked on outside. Some pieces were cut, and of were measured. There were also many packets or pieces of hdkfs., and other goods, to be opened and counted. Most of the goods remained as they were when originally purchased. The *the* appearance of the pieces of prints, after appraisement, seemed as if they had not been opened by appraisers; that is, the single pieces. In taking inventory there was a quantity of hardware which had to be opened and counted; does not know whether appraisers did the same. He was employed by receiver; has as yet made no charge; he is willing to receive five dollars a day.

(2.)

Motion for compensation to appraisers.

TYACK
vs.
NEWELL.

For defence. The testimony of Peter McGreal.

Believes that the appraisers are competent to the discharge of duties

of appraisers in this cause. I may, perhaps, [not] be the best judge, but I think the services of competent persons to be worth ten dollars a day; knows not how long they were employed, nor what portion of the day they were engaged in the discharge of their duties. With the intimate knowledge I had of the goods, I could have made the examination in a short time; with the knowledge and means of information they had, the examination ought to have been made in three whole honest days' work; an accurate examination could not have been made in three days. The impression I had of the order of court was to examine and separate those perishable from those not so, and other articles not perishable, to see what would be the best season of the year for sale. Without a knowledge of the packages, and with the inventory, the time occupied should have been from three to five days; one person could do it in a shorter time than three. There was between ten and twelve thousand dollars worth of goods, and over seventy-five packages and boxes. I have no knowledge of the character of the examination made by the appraisers.

PETER McGREAL.

Subscribed and sworn to before me, 20th , 1849.

JAMES LOVE, *Master*.

(3.)

TYACK et al.
vs.
STEWART NEWELL et al.

John H. Burnett being sworn:

Int. 1st. Are you acquainted with the labor performed by Messrs. League, Sargeant & Illies, in appraising the goods in controversy under the order of court?

Answer. I am.

Int. 2d. What do you consider a fair remuneration for their services, per day each, in the month of August last, in the performance of those duties?

Answer. Ten dollars a day each.

Cross examined by defendant.

Int. Did you see them at work?

Answer. I did not see them at work, but believe they were, from the common understanding in the neighborhood.

Int. 2d. Does not know the quantity of goods, but has understood there was between eight and twelve thousand dollars. He has acted as appraiser in the case of the cargo of the schooner Star, and received ten dollars a day. Neither Mr. Illies or Mr. League, in August last, were merchants engaged in business, but both had been merchants, and are qualified to do the duties of appraisers. Business, in the month of August, is not so brisk as at other seasons.

JOHN H. BURNETT.

Subscribed and sworn to before me, February 19th, 1849.

JAMES LOVE, *Master*.

H. A. Cobb, being sworn, states, he does not know anything of the services rendered, but considers the labors of the appraisers to be worth ten dollars a day in August.

Cross examined.

Says there is a difference, in portions of the year, in the attentions of merchants to their business, but does not consider the time of year should make any difference to a merchant competent to discharge the duties; does not think he could employ persons as competent as he considers himself for five dollars a day; he might do so, and perhaps he could. Mr. League was not at the time engaged in mercantile business; perhaps Illies was, and perhaps not; both were competent. Mr. Sergeant was a merchant engaged in business.

H. A. COBB.

D. D. Culp, being sworn, says: He considers the services of competent merchants to act as appraisers of goods, in the month of August, to be worth ten dollars a day each; he has seen the stock of goods in controversy. If they were in good condition, a short time would be sufficient to examine them. The length of time would depend entirely on the condition they were in. In an hundred packages of goods, boxed up in confusion, without order or regularity, in the place where they were, and in boxes and packages of common size, it would take ten days. He does not think three could do it as soon as one could. If each of the three should examine separately a box, it could of be done in less time. Did not see the goods after they were packed up.

D. D. CULP.

A. F. James, being sworn, considers the services of the appraisers in this cause, at the time, to be worth ten dollars a day each; mercantile business dull in August; but would not consider $5 per day, to a merchant engaged in business, would be compensation for his services, and does not think they could be employed at that sum; one with no business might. Neither Mr. League or Illies were engaged in business; Sergeant was. He believes that the services of competent men could be engaged for less than ten dollars a day.

A. F. JAMES.

And afterwards, to wit, on the 31st day of May, A. D. 1849, the master's report herein having been read, the court made the following order, to wit:

TYACK & MURRAY
vs.
STEWART NEWELL.

The report of the master in this cause, filed on the 27th day of February, 1849, having been read, it is ordered that the same be approved. It is further ordered, that the receiver pay to William M. Sergeant,

Thomas M. League, and John Illies, seventy dollars each as compensation as appraisers.

And afterwards, on the same day, to wit, the 31st day of May, the defendants herein, by their counsel, filed the following motion, to wit:

STATE OF TEXAS.

In the district court of the United States, in and for the district of Texas.

No. between. { WM. TYACK & L. MURRAY and S. NEWELL & S. W. DOSS. } In equity.

In this cause the defendants, by their counsel, move the court to grant the motion made at the last term of this court, and entered at said term, for the dismissal of the said cause, upon the ground, among other grounds, of the revocation of the authority by which said suit was instituted; which is hereby referred to and renewed.

J. A. SWETT,
For def't, Newell.
A. P. THOMPSON,
O. F. JOHNSON,
For def't, Doss.

Afterwards, on the fourth day of June, the defendants herein filed the following revocation, to wit:

NEW YORK, *July 8th*, 1848.

WM. E. WARREN, esq.: I hereby revoke all authority conferred upon you in a power of attorney, executed by Wm. Tyack and myself, bearing date the day of May, 1848; and direct that any and all goods that you may have obtained from Stewart Newell, under said power of attorney, be returned to said Stewart Newell.

In witness whereof I have hereunto set my hand and seal, this eighth day of July, in the year one thousand eight hundred and forty-eight.

LINDLEY MURRAY. [SEAL.]

CITY AND COUNTY OF NEW YORK, *ss.*

On the 10th day of July, 1848, before me, came Lindley Murray, known to me to be the same person described in, and who executed, the above instrument, and acknowledged that he executed the same.

JASPER STRONG,
Commissioner.

And afterwards, to wit, on the 4th day of June, A. D. 1849, the defendants in this cause, by their counsel, filed the letter of William Tyack, which letter is in words and figures following, to wit:

JOSEPH SWETT, esq., *Galveston.*

SIR: Owing to a severe fall down a flight of stairs, a few days since,

I am unable to write myself I feel deeply anxious about the suit now pending before Judge Watrous in the United States district court, held at the city of Galveston, Texas, now in session. I understand this suit is entitled Tyack & Murray vs. Newell & Doss, in equity; was commenced by Wm. E. Warren, as my attorney. I do not recognise the acts of said Warren in this suit, or in any other matter or business which he undertook for me while he was in Texas; he, the said Warren, having violated my private instructions to him in every particular, not even condescending to advise me of what he was doing, his acts were unjust as to my partner, Stewart Newell, and I think wickedly intended by him to do both Newell and me all the injury in his power. I have informed Warren, since his return, that I considered his whole course, in Galveston, not only treacherous and base, but entirely adverse to my interest; and that I would never recognise or confirm any act of his under my power of attorney to him.

I unhesitatingly pronounce him a scoundrel of the deepest dye; and I hereby authorize and request you to have the suit, instituted by him in my name, discontinued with the least possible delay, and save any further expense.

Yours, truly,

WILLIAM TYACK.

New York, March 20th, 1849.

And afterwards, on the fourth day of June, A. D. 1849, the defendants in this cause filed the affidavit of Joseph A. Swett; which affidavit is in words and figures as follows, to wit:

In the United States district court, in and for the district of Texas. In equity.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss.

Before me, James Love, a master in chancery, personally appeared Joseph A. Swett, who being duly sworn, deposes and says, that he received the annexed letter, signed by William Tyack, through the post office at Galveston; that the same was enveloped and post-marked with the usual post office mark of the city of New York, as appears by the annexed envelope, in which the said letter was enclosed, and, from the date of the said post-mark, was by him received by due course of the mail from New York to Galveston, and that said letter was received from the post office, in Galveston, in the presence of Ovid F. Johnson, esquire, to whom deponent read the contents thereof, or the same was, at the time aforesaid, read by said Johnson.

J. A. SWETT.

Sworn to and subscribed before me, at office in the city of Galveston, this 4th day of June, A. D. 1849.

JAMES LOVE, *Clerk*.

And on the same day, to wit, on the fourth day of June, A. D. 1849, the defendants, by their counsel, filed the following affidavit; which affidavit is in words and figures as follows, to wit:

In the United States district court, in and for the district of Texas. In equity.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss.

Before me, James Love, a master in chancery, personally appeared Lawrence Frosh, who being duly sworn, deposes and says, that he is well acquainted with one of the above named complainants, to wit, with William Tyack, of the city of New York; that he has had frequent transactions with said Tyack; that he has frequently seen him write, and has had many papers from him in his handwriting, and is familiar with the signature of the said Tyack, and that the name of William Tyack affixed to the letter hereunto attached is the writing and genuine signature of the said William Tyack, to the best of his knowledge and belief.

LAW. FROSH.

Sworn to and subscribed before me, at my office in the city of Galveston, this 31st day of May, A. D. 1849.

JAMES LOVE, *Clerk*.

And afterwards, on the same day, that is to say, on the fourth day of June, A. D. 1849, William Tyack, one of the complainants in this cause, by Joseph A. Swett, filed a motion to dismiss said cause, in words and figures as follows:

THE STATE OF TEXAS.

In the district court of the United States, in and for the district and State of Texas. In equity.

Between
WILLIAM TYACK and L. Murray
and
S. NEWELL and S. W. Doss.

In this case the complainant, William Tyack, by Joseph A. Swett, esq., moves the court to dismiss the said cause.

JAS. A. SWETT.

And afterwards, on the same day, the defendants, by their counsel, filed a motion to dismiss this cause, in the following words and figures, to wit:

THE STATE OF TEXAS.

In the district court of the United States, in and for the district and State of Texas. In equity.

WM. TYACK and L. Murray, compl'ts
and
S. NEWELL and S. W. Doss, deft's.

In this case the defendants, by their counsel, move the court to dismiss the said cause, upon the grounds set forth in the motion made at the last term and now pending, to the effect and because the authority to continue the same on behalf of both the complainants is revoked.

JOS. A. SWETT,
A. P. THOMPSON,
O. F. JOHNSON.

And afterwards, on the fifth day of June, A. D. 1849, the complainants, by their counsel, filed the following affidavit of Lorenzo Sherwood; which affidavit is in words and figures as follows, to wit:

United States district court, district of Texas. In equity.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss.

Personally appeared before me, on this day of June, A. D. 1849, Lorenzo Sherwood, one of the solicitors and of counsel for the complainants in the above cause, and also of counsel on the part of the creditors mentioned in the bill of complaint and answer of Stewart Newell as being the creditors of "Stewart Newell & Co.," and who being by me duly sworn, deposes and says, that, in the month of October last past, he had a long and explicit conversation with William Tyack, one of the complainants in the above cause; that the conversation related to what had been done in the progress of this cause and as connected therewith, and of the steps and proceedings on the part of William E. Warren, under whose direction, as agent and attorney in fact, the cause had been commenced; that said Tyack at that time told deponent that he had been informed, through the committee on the part of the creditors, of the general nature of what had been done; and further stated that said Warren, he thought, had been faithful, and had done everything for the best; that Newell had been very fraudulent, in his belief, and he hoped the creditors would be able to hold the property.

And deponent further says, that said Tyack, afterwards, made an appointment to meet deponent, and did so meet deponent, at his office, in New York, about the middle of November last; that when said Tyack came to deponent's office, he informed deponent that he had come to talk on matters in relation to the suit at Galveston; that deponent had a conversation of two or three hours with said Tyack, and in

which he informed said Tyack, intimately and in detail, as to the course taken by Mr. William E. Warren, at Galveston—the commencement of the cause in the State district court, its discontinuance, the commencement of this cause, its progress, the incidents of litigation, and the facts of the case generally, as connected with the litigation of this cause up to that time. And deponent further says, that he intended to, and believes he did, give an accurate detail of all the essential facts connected with the litigation of this cause up to that time, and deponent has [no] doubt [that] said Tyack understood, definitely, the said facts as detailed, what had been done by said Warren, the proceedings taken in the cause, and the progress and situation of the cause up to that time, as far as a man of said Tyack's capacity could be made to com prehend the nature of judicial proceedings and their incidents.

And this deponent further says, that said Tyack, during the last mentioned conversation, expressed to deponent his satisfaction as [to] what said William E. Warren had done, and as to the efforts of the counsel he had engaged; that said Tyack then stated to deponent that it was lucky for him and the creditors that Warren went out to Galveston; that if he had not gone, Newell and his gang would undoubtedly have got the property all away, so that the creditors would never have got any thing; that as it was, pretty much all they ever would get would be the property at Galveston; that the most he, Tyack, would be able to do, would be through the assistance of some friends to pay them ten per cent. on their demands, in addition to what they might get at Galveston. Deponent further says that said Tyack, in the conversation, spoke of an agreement between complainants and the creditors, by which each was to pay one-half the expenses attendant upon said Warren's coming out to Galveston, and in the litigation of the property; that said Tyack remarked to deponent, that the creditors would have to bear the whole burden, as he should be unable to pay any thing, and as it turned out Murray [was] a great deal worse than nothing. Deponent further says, that in the said conversation Tyack spoke of Murray's attempted revocation of the power of attorney to Warren; that in reference to that he, said Murray, behaved badly, but that it was of a piece (deponent thinks that was the expression) of his double dealing throughout. And deponent further says, that the contract, as stated by Tyack, as to the payment of expenses, has been stated to deponent by several of the creditors mentioned in the bill of complaint, and more especially by the committee appointed on the part of the said creditors to take care of their interest, Messrs. Draper, Brewster and Spicer; and deponent further says, he has had no other or different understanding, from the commencement of the suit here, that such was the agreement.

And deponent further says, that some time subsequent to the date of the pretended letter from Tyack to J. Swett, he received a letter from his correspondent in New York, in answer to one written by deponent to said correspondent, suggesting that some manœuvre was probably afoot to operate on Tyack, with a view of getting him to revoke

the power of attorney to Warren, and requesting him to see Mr. Draper, and have him see Tyack; that said correspondent stated he had so done; that Draper had seen Tyack, and that no revocation would be got from him. And deponent further says, that from his conversations and acquaintance with the said William Tyack, he regards and believes him a man of feeble health and intellect, and capable of being easily imposed upon; and further says, that from his knowledge of the facts, as connected with the litigation of this cause, and coming to him through his professional engagement in the same, deponent has just cause to believe, and does fully believe beyond a doubt, that the said pretended letter from said Tyack to J. Swett, and notice of which was given and copy served on deponent, on the evening of the second of June, instant, as matter to be read in evidence on motion to dismiss this cause, was, and is, a forgery; or that the contents of the same were fraudulently substituted for something else in obtaining the signature of the said Tyack, with a view to deceive and impose upon him; or, if the signature of said Tyack was obtained to the said pretended letter with his knowledge of its contents, that he had been deceived and imposed upon by the false and fraudulent representations of some person or persons engaged in the defence of this cause. And deponent further says, that he has despatched copies of the motion papers, and also a copy of the pretended letter of said Tyack, bearing date on the 20th of March, 1849; that deponent expects to get return from the said papers, with the result of such investigation, in the earliest possible time.

Deponent further says, that the pretended letter to J. Swett purports to have been post-marked on the 5th day of April; that the same would have arrived at Galveston, by the ordinary course of the mail, in about fifteen days; that the same, as deponent believes, has been kept in the possession of the said Swett for near six weeks, without any notice or intimation to complainants' solicitors that any such letter had been received, or any other communication from said Tyack to him; and further says, that the first notice or intimation to deponent that any such letter was in existence, was when the notice was served on Saturday evening, the 2d of June, instant.

And this deponent, as solicitor and counsel on the part of complainants, with the assent of associate counsel, in case this honorable court should admit the said pretended letter of Tyack to be read in evidence on the motion to dismiss this cause, and should deem the same in any way important or necessary to be answered to prevent a dismissal of the cause, would ask for a continuance of the cause, in the full belief and expectation that the complainants will be enabled to prove and show to the court that the said pretended [letter] is an attempted fraud upon the said William Tyack.

And this deponent further asks, that the said letter may be put on the files of this court; that a copy of the same may be entered by the clerk on the minutes, and that the original letter may be annexed to a commission to be sent to New York, and, if necessary, that the time for taking testimony in this cause may be extended.

And deponent further says, that the creditors mentioned in the bill of complaint, in this cause, have contributed in expenses under their agreement with complainants the amount of two thousand dollars and over, to deponent's knowledge; and further says, he is informed, and believes the same to be true, that they have contributed and paid, in the whole, under their aforesaid agreement, the amount of over three thousand dollars. And deponent further says, that the amount paid, and for which the said creditors would become liable, and for which they have incurred responsibility in good faith in case this cause was dismissed, would not, in the opinion of this deponent, fall short of five thousand dollars; and as deponent further believes the said creditors would have no means of redress or compensation, owing to the insolvency of complainants.

LORENZO SHERWOOD.

Subscribed and sworn to before me, 5th June, 1849.

JAMES LOVE, *Clerk.*

And afterwards, on the same day, to wit, on the fifth day of June, A. D. 1849, the complainants, by their attorneys, filed the following power of attorney or substitution, in the words and figures following, that is to say:

THE STATE OF TEXAS.

Know all men by these presents, that I, William E. Warren, having received a power of attorney from William Tyack and Lindley Murray, which is now on file in the United States district court, and by which certain powers are conferred on me: Now, therefore, be it known, that in case it may be necessary to execute any bond or other instrument in writing necessary in the carrying on the suit now pending in the United States district court, in which the said Tyack and Murray are complainants, and Stewart Newell and Stephen W. Doss are defendants, I, the said William E. Warren, do hereby substitute F. H. Merriman, as attorney in fact, with the same power and authority I have, to do the same under my said power of attorney.

WILLIAM E. WARREN.

In witness whereof I have hereto set my hand and seal, this twenty-ninth day of August, 1848. L. SHERWOOD.

UNITED STATES DISTRICT COURT,
District of Texas.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss.

Personally appeared before me, on this day of June, A. D. 1849, Lorenzo Sherwood, who being by me duly sworn says, he is the

subscribing witness to the within power of attorney executed by William E. Warren to F. H. Merriman; that he saw the same executed and delivered on the day it bears date, and that the said Warren declared at the time of the execution that the same was executed for the uses and purposes therein mentioned.

LORENZO SHERWOOD.

Subscribed and sworn to before me, June 5th, 1849.

JAMES LOVE, *Clerk.*

And afterwards, on the 6th day of June, A. D. 1849, the complainants, by their counsel, filed their motion to extend the time for taking testimony in this cause, in words and figures as follows, to wit:

THE UNITED STATES DISTRICT COURT,
District of Texas.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss. } In equity.

And now at this day, that is to say, on the sixth day of June, A. D. 1849, comes the said William Tyack and Lindley Murray, by their solicitors, Merriman, Sherwood and Wagner, and move the court for an extension of the time to take testimony in the above cause until the first Monday of September next; which motion will be founded on the papers on file in this cause.

MERRIMAN, SHERWOOD & WAGNER,
Sol'rs and of counsel for complainants.

June 6th, 1849.

And afterwards, on the 23d day of June, A. D. 1849, the defendants, by their solicitors, filed their petition for continuance of motion to dismiss, in words and figures following, to wit:

TYACK and Murray
vs.
NEWELL and Doss.

The motion made by defendants on the fourth day of June, instant, to dismiss this case, is respectfully prayed to be continued for thirty days from this date.

JOHNSON & SWETT, THOMPSON, JONES,
For defts.

Galveston, June 23d, 1849.

And afterwards, on the same day, to wit, on the 23d day of June, A. D. 1849, the petition of the defendants, asking a continuance of their motion to dismiss, came on to be heard; whereupon the court made the following order, to wit:

TYACK and Murray
vs.
STEWART NEWELL et al.

On motion of defendants' counsel, and for cause shown, it is ordered that this motion be continued for thirty days from this date.

And afterwards, on the 24th day of July, defendant Newell, by his counsel, filed the following motion, to wit:

In the case of—

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and S. W. Doss.

Comes J. A. Swett, of counsel for defendant, Newell, and moves the court that James Love, esquire, clerk of this court, be ordered to produce in court all the papers heretofore exhibited, or used in said cause, and particularly that said clerk produce a letter under the signature William Tyack, and directed to said Swett by the name of Joseph Swett; which said letter, together with the envelope thereof, was filed in said cause in this honorable court, and upon which letter a motion was made to dismiss this said cause.

J. A. SWETT,
Of counsel for defendant Newell.

And afterwards, on the 25th day of July, A. D. 1849, the motion of defendant Newell, requiring the clerk of this court to produce papers in this cause, &c., came on to be heard; whereupon the court made the following order, to wit:

TYACK and Murray
vs.
STEWART NEWELL et al.

On motion of counsel for defendant, it is ordered that the clerk of this court produce in court all the papers heretofore exhibited and used in said cause, and particularly a letter under the signature of William Tyack, and directed to Joseph Swett; which said letter, together with the envelope thereof, was on file in said cause, and read upon the trial of the motion of defendants to dismiss said cause.

And afterwards, on the 26th day of July, A. D. 1849, James Love, clerk of this court, in answer to a rule heretofore made on the 25th day of July instant, filed his response to said rule in words and figures following, to wit:

TYACK and Murray
vs.
STEWART NEWELL et al.

In answer to [the order] of the honorable court, made and entered on the 25th inst., July, on James Love, clerk of this court, to produce all

the papers in the above entitled cause, and more particularly a letter from William Tyack directed to Joseph Swett, and the envelope of said letter, which said letter was read on the trial of a motion made by defendants' counsel to dismiss said cause, this respondent, in answer to the aforesaid rule, herewith produces all the papers on file in his office. He states that the letter mentioned, and envelope, is not now on file; that he distinctly recollects that it was read on the trial, and the envelope produced; that upon the next day, being applied to by one of the defendant's counsel for the letter and envelope, for examination or some other purpose, he made examination for it, and found it was not amongst the papers; and, after diligent search in the office, and inquiring from all who might be likely to have it, it could not be found. The respondent states that he gave no one leave to take it from its proper place in the office; nor does he believe it was so taken from the office by the consent of any one connected with the office, who have daily access to the papers. This respondent says that, either by mistake or design, he believes the paper alluded to has been taken from the office by some person unknown to him.

He therefore respectfully asks that the rule be discharged.

JAMES LOVE,
Clerk U. S. dist. court, dist. of Texas.

Sworn to and subscribed before me on this 26th day of July, A. D. 1849.

A. M. HUGHS, *Commissioner.*

And afterwards, on the 26th day of July, A. D. 1849, on motion of defendants, by their counsel, made in open court, by direction of the court, the following order was entered upon the minutes thereof, in words and figures as follows, to wit:

TYACK & MURRAY
vs.
STEWART NEWELL et al.

On motion, it is ordered that Messrs. Sherwood, Merriman, and Wagner, solicitors for complainants, and Messrs. Johnson, Swett, Thompson, [and] Jones, of counsel for defendants, produce in court all the papers in this cause heretofore on file as original papers or exhibits in this cause, and particularly a letter under the signature of William Tyack, and directed to Joseph Swett; which said letter, together with the envelope thereof, was on file in said cause.

And afterwards, on the 27th day of July, A. D. 1849, on motion of defendants, by their counsel, made in open court, it was ordered by the court, in words and figures following, to wit:

TYACK & MURRAY
vs.
STEWART NEWELL et al.

On motion of counsel for defendants, it is ordered that the time f

filing the authority of complainants to dismiss their bill be enlarged until Saturday, next week.

And afterwards, to wit, on the 1st day of August, A. D. 1849, the complainants, by their counsel, filed their motion to dismiss the said cause, in words and figures following, to wit:

Afterwards, on the first day of August, A. D. 1849, the defendants herein filed the following instrument of revocation, to wit:

Whereas, by a certain instrument, or power of attorney, made and executed on the thirteenth day of May, one thousand eight hundred and forty-eight, I did, in conjunction with William Tyack, of the city of New York, as members of the firm of Stewart Newell and Company, of Galveston, Texas, and of William Tyack and Company, of New York, appoint William E. Warren, of the city of New York, our attorney for us, and in our name and place, to institute, in case of necessity, any suit or legal proceedings, in Galveston, or in the State of Texas, for the purpose of securing the property and effects of said firms, and preventing all persons from squandering or making away with the same; and also for other purposes, more particularly and fully specified and set forth in said instrument or power of attorney; and whereas I did make, sign, and execute, on the tenth day of July, 1848, a written revocation of said power of attorney to said Warren; and whereas it has been suggested that a further revocation or confirmation is desirable to effectuate my intention therein:

Now, therefore, know all men by these presents, that I do hereby ratify and confirm said revocation, and all former revocations made by me of the power and authority of said Warren as such attorney, as also all the acts, deeds, transactions, and writings of the said William Tyack now heretofore made, disaffirming and revoking such *such* power and authority; and I do hereby declare all the acts, deeds, and transactions of the said Warren, of every kind and description, as such attorney, since the tenth day of July, one thousand eight hundred and forty-eight, utterly null and void; and I hereby declare that it is not the intention or meaning of any thing expressed herein, that the revocation herein contained shall be construed as implying any authority on the part of said Warren to act as such attorney subsequently to the tenth day of July aforesaid, or subsequently to any prior revocation of his authority by the said William Tyack prior to that date, but simply as a confirmation of such prior act or acts of revocation, and as supplying any deficiencies which they may contain.

And I do hereby order and direct that a certain suit, pending in the district court of the United States, held at Galveston, in the State of Texas, in which said Tyack and myself are plaintiffs, and Stewart Newell and Stephen W. Doss are defendants, be forthwith discontinued and forever abandoned; and I hereby authorize the attorneys, counsellors, or solicitors of the defendants therein, to take all necessary and *and* proper *legal* legal means to effect that object; and I do in all respects concur with, ratify, and approve a certain instrument of revocation of the said power of attorney granted to said Warren, which said instrument

is executed by said Tyack, bears even date herewith, and is substantially to the same effect as these presents. And I do hereby revoke all power and authority by me, whether jointly or severally granted or delegated to the said Warren, as my attorney, and declare all his future acts, as well as those heretofore done or executed, subsequently to the revocation thereof, null and void.

In witness whereof I have hereunto set my hand and seal, this tenth day of July, in the year one thousand eight hundred and forty-nine.

LINDLEY MURRAY. [SEAL.]

In presence of—
S. B. ANDREWS.

The words "as such attorney," interlined on second page, and words "is not," st[r]i[c]ken out on same page, and one line interlined on first page, between 8 and 9 lines, is executed by said Tyack, interlined on second page.

PETER MACGREAL.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

On this tenth day of July, one thousand eight hundred and forty-nine, before me personally came S. B. Andrews, with whom I am acquainted, who, being by me duly sworn, did depose and say, that he resides in the city of New York; that he is acquainted with Lindley Murray, above named, and knows him to be the same person described in, and who executed, the foregoing instrument. That he saw him execute the same, and that the said Murray, in his presence, acknowledged the execution of the same; and that he, said S. B. Andrews, subscribed his name as a witness thereto.

J. WHELSON, *U. S. com'r.*

And afterwards, on the same day, to wit, on the first day of August, A. D. 1849, the defendants filed the following document, to wit:

U. S. DISTRICT COURT,
District of Texas.

WILLIAM TYACK [and] Lindley Murray
vs.
STEWART NEWELL [and] Stephen W. Doss.

I believe that the facts charged in the bill of complaint in this cause, imputing fraud and falsehood to the said Stewart Newell, are entirely destitute of foundation. I know that, at the time of the commencement of this suit, William Tyack, as a member of the firm of William Tyack & Company, was actually indebted to the said Stewart Newell, another member of said firm. And I further declare, that the power of attorney, given to William E. Warren by the said William Tyack and myself, was coerced from me by the urgency of the creditors of the firm of William Tyack & Company, and also by their representatives;

that the said Tyack having signed said power of attorney, it was of little or no consequence whether I united with him in doing so or not. Had time been allowed me for reflection, I never should have signed said power. From all the facts within my knowledge, as a member of the firm of William Tyack & Company, I am convinced that the said Tyack and myself have no legal or equitable claim on the said Stewart Newell, in the suit now pending for a sale of the goods in his possession, or on the said Stephen W. Doss. As to the said Warren, I have already revoked, to the utmost of my power, all the authority conferred upon him, in and by said letter of attorney, or as the attorney of the firm of William Tyack & Company. And in view of the expenses incurred, and to be incurred, in the prosecution of this suit, and the liabilities to which, in event of its failure, the plaintiffs or complainants will be exposed, I deem it advisable that an order of discontinuance should be entered, and that said suit should be dismissed without delay; and I hereby authorize the attorney or attorneys, solicitor or solicitors, of the defendants, to take such measures as they may deem necessary and proper for a summary dismissal of said suit. I have been, and am now, satisfied the sale and disposition of the goods made by said Newell, referred to in the bill sworn to by William E. Warren in this cause, was the best disposition and sale that could have been made, and would have greatly benefitted both Mr. Tyack and myself, had not said Warren involved us in litigation, difficulty, and expense; that it was never intended by me to deprive said Newell of the absolute control and disposition of said goods; nor was it, as I believe, the intention of my partner, Captain Tyack. That one of the principal objects of the business of the firm was the development of the interest of the Galveston City Company, in which we were largely interested—Captain Tyack being the treasurer of said company.

I know that Captain Tyack has received from Mr. Newell a great deal more than he has ever expended for the benefit of the firm, or the payment of the debts of the firm; I know this, because I had the control of the books of the firm here. I also know that Captain Tyack never did advance more than two thousand two hundred dollars whilst I had charge of the books, and that he has received property, which I estimate in value at $7,000, or thereabouts, from the firm, and from Mr. Newell; and the amount so received by Captain Tyack has also been estimated by Captain Tyack at $7,000. I had charge of the books of William Tyack & Co. until some time subsequent to commencement of this cause.

LINDLEY MURRAY. [L. S.]

In presence of—
WM. C. BARRETT,
PETER MACGREAL.

And afterwards, on the same day, the defendants filed the following power of attorney, to wit:

Know all men by these presents, that I, William Tyack, of the city

of New York, a member of the firm of Stewart Newell & Co., of Galveston, Texas, and of William Tyack & Co., of New York, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, Selleck B. Andrews, of the city of New York, my true and lawful attorney, for me, and in my name, place, and stead, to settle, compromise, arrange, and adjust all matters of difference between Stewart Newell, Lindley Murray, and myself, and to order and direct a discontinuance and dismissal of, and to cause and procure to be discontinued and dismissed, any and all suit or suits, action or actions, at law or in equity, between me and said Newell, or Murray, or Stephen W. Doss, especially a suit in the State of Texas, entitled, William Tyack and Lindley Murray vs. Stewart Newell and Stephen W. Doss, said suit being now pending in the district court of the United States, for the district of Texas; and which said last mentioned suit was instituted, or caused and procured to be instituted, by one William E. Warren, under a certain power of attorney executed by me and Lindley Murray, dated the day of May, 1848, and acknowledged on the 13th day of May, 1848, before E. Delafield Smith, notary public, giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever, requisite and necessary to be done in and about the premises, as fully, to all intents and purposes, as I might or could do if personally present, with full power of substitution and revocation; hereby ratifying and confirming all that my said attorney, or his substitute, shall lawfully do, or cause to be done, by virtue hereof.

In witness whereof I have hereunto set my hand and seal, the thirteenth day of July, in the year of our Lord one thousand eight hundred and forty-nine.

WILLIAM TYACK. [L. S.]

Sealed and delivered in presence of—
JOHN SULLIVAN,
PETER MACGREAL.

UNITED STATES OF AMERICA,
City and county of New York, ss.

Be it known, that, on the fourteenth day of July, one thousand eight hundred and forty-nine, before me, Daniel T. Walden, a public notary in and for the State of New York, duly commissioned, dwelling in the city of New York, personally came John W. Sullivan, to me known to be the subscribing witness to the above power of attorney, who, being by me duly sworn, testified that the said William Tyack executed the foregoing power in his presence, and acknowledged the above letter of attorney to be his act and deed.

In testimony [whereof] I have hereunto subscribed my name, and affixed my seal of office, the day and year last above written
[L. S.]

D. T. WALDEN, Jr,
Not. pub., New York.

DISTRICT COURT OF THE UNITED STATES,
District of Texas.

In chancery. Between

WILLIAM TYACK and Lindley Murray, complainants,
and
STEWART NEWELL and Stephen W. Doss, defendants.

Ebenezer Allen and William G. Hale, of counsel for the complainants in the above entitled cause, and specifically retained by them for the purpose of this motion, referring to the power of attorney from the said William Tyack to Select B. Andrews, now on file, to the declaration of the said Lindley Murray; and to the revocation of the power of attorney, formerly given by the said Murray to William E. Warren, and also to all the former proceedings in this cause pertinent hereto, now move this honorable court, on the part of the said complainants, to dismiss the said cause as to all the defendants thereto.

EBEN. ALLEN & WM. G. HALE,
Of counsel for complainants.

August 1st, 1849.

And afterwards, to wit, on the 2d day of August, A. D. 1849, the complainants, by their counsel, filed their motion to strike the motion, heretofore filed by Messrs. Allen and Hale to dismiss said cause from the docket, in words and figures as follows:

United States district court. (In equity.)

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss.

And now come the complainants, William Tyack and Lindley Murray, by their solicitors and counsel, Merriman, Sherwood & Wagner, and move the court that the motion filed in this cause by Allen & Hale to dismiss the bill be stricken from the docket, and for such other and further [order] as the court may deem proper in the premises; which motion will be founded on the papers on file in the said court.

MERRIMAN, SHERWOOD & WAGNER,
Solicitors for complainants.

And afterwards, on the same day, to wit, on the 2d day of August, A. D. 1849, the motion of complainants, by their counsel, Messrs. Sherwood and Wagner and Merriman, to strike from the docket the motion heretofore made by Messrs. Allen and Hale to dismiss said cause, came on to be heard; whereupon the court made the following order, to wit:

WM. TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss.

The motion of Lorenzo Sherwood and Franklin H. Merriman to

strike from the docket the motion of William G. Hale and Eben. Allen, the counsel for the complainants, made on the 1st day of August, came on to be heard, and was argued, and the court being sufficiently advised thereof, it is ordered that the same be overruled.

And on the same day, to wit, on the second day of August, A. D. 1849, Ebenezer Allen filed a statement in this cause, in words and figures following, to wit:

WM. TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss.

Before the filing of the original bill in the above entitled cause, I was applied to in behalf of both parties, plaintiffs and defendants, to act as counsel in this cause; I think the first application was in behalf of the defendants; however that may be I positively declined to appear or act for either at that time; and understanding afterwards that my name was subscribed to the bill as one of the solicitors for the plaintiffs, I requested Mr. Sherwood to have it withdrawn.

I was yesterday requested to act as counsel for the plaintiffs by S. B. Andrews, attorney in fact for Mr. Tyack, and consented so to do, consequently my name, with that of Mr. Hale, my partner, appears to the motion filed by us on yesterday to dismiss this cause. Previously to the filing of that motion I had nothing to do with the conduct of the cause on either side, and was not before retained therein. I presume from Mr. Sherwood's statement that my name was retained to the bill through misapprehension on the part of Mr. Sherwood.

EBEN. ALLEN.

And afterwards, to wit, on the 2d day of August, A. D. 1849, the affidavit of Select B. Andrews was filed in this cause, in words and figures following, to wit:

THE STATE OF TEXAS,
County of Galveston.

Seleck B. Andrews, of the city of New York, declares and states, that he is acquainted with William E. Warren, also of the city of New York; that in the month of , A. D. 1848, in the city of New York, and soon after the return of said Warren from Texas, Captain William Tyack, of the city of New York, wrote a letter to said Warren denouncing and abusing said Warren for his course in Texas, touching the business of William Tyack, Lindley Murray, and Stewart Newell; that said Tyack in said letter disapproved of and repudiated all the acts of said Warren while in Texas, and said that he, Tyack, never would recognise or ratify any acts of said Warren, under a certain power of attorney, given by said Tyack and Murray to said Warren; that said letter was signed by said Tyack, and was delivered to said Warren, in the office of John P. Crosly, esq., in Wall street, New York.

And he also declares and states, that the said Tyack, with whom he is on intimate terms, in frequent conversations, down to the day of his departure from New York, and in presence of Peter MacGreal, of Texas, repeatedly stated the same things against said Warren, and denounced him as aforesaid, and declared said Warren to be a villain; that said Warren had disregarded his interest and violated his instructions, in relation to the course pursued by said Warren touching the business of said Tyack, Murray & Newell; that said Tyack stated repeatedly that it never was his wish or intention to have the partnership between himself and said Newell dissolved, and that the same is not now dissolved; that since the month of June, A. D. 1848, he has had frequent interviews with Captain William Tyack, in which the business of the firm of Stewart Newell & Co and the said Tyack & Co. was the subject of conversation, and that on no occasion has ever heard Captain Tyack express a wish or desire to have the partnership between himself and Newell dissolved. That Captain Tyack has frequently spoken to him of the interviews he had had with Mr. Sherwood respecting the suits in Texas, brought in the names of said Tyack and Lindley Murray against Stewart Newell, and mostly in the presence of Mr. MacGreal, of Texas; he stated that the representations given of those interviews by Mr. Sherwood, in his affidavit made in the case, a copy of which was shown to said Tyack, were essentially incorrect and untrue; that he had never expressed his approbation of Warren's conduct and proceedings in Texas, or that of his counsel, and *and* he then and now disapproved of them altogether, and as soon as he heard of them had disapproved of them, and refused to sanction them, and had so notified Warren soon after he returned to New York; and he has at all times since the return of said Warren to New York spoken in the same terms of Warren's conduct and the proceedings instituted by him in Texas. Captain Tyack also added that he regarded Mr. Sherwood as quite as big a villain as Warren.

S. B. ANDREWS.

Sworn to and subscribed before me, on this 2d August, A. D. 1849.
A. M. HUGHS, *Commissioner.*

And on the same day, the defendants in this cause filed the affidavit of Peter MacGreal, which affidavit is in the words and figures following, to wit:

THE STATE OF TEXAS, *county of Galveston.*

Peter MacGreal, of Texas, on oath declares, that on the 11th and 12th days of July, A. D. 1849, he had conversations with William Tyack, of the city of New York, at the residence of said Tyack; that said Tyack had then before him a copy of the letter from Tyack to J. Swett, esq., which is now on file in the honorable United States court of the district of Texas, in the case of Tyack and Murray vs. Newell and Doss; that he said it was the "copy of the letter he had sent to Judge

Swett to dismiss the cursed suit brought by that villain Warren, whom he, Tyack, had frequently denounced," and "that he" (Tyack) would never recognise any of said Warren's acts while in Texas, as Warren had violated his instructions and betrayed his interest in the most villanous manner." That the said Tyack had also before him [a] copy of Lorenzo Sherwood's affidavit, hereto attached; that the same had been read to said Tyack, and he pronounced said affidavit of said Sherwood a lie, and that he (Sherwood) was as great a villain as William E. Warren.

PETER MacGREAL.

Sworn to and subscribed before me, this 2d August, A. D. 1849.
A. M. HEWS, *Commissioner.*

To which affidavit of Peter McGreal is annexed the following copy of an affidavit of Lorenzo Sherwood, in said McGreal's affidavit referred to, to wit:

United States district court, district of Texas.—In equity.

WILLIAM TYACK AND LINDLEY MURRAY
vs.
STEWRT NEWELL AND STEPHEN W. DOSS.

Personally appeared before me, on this day of June, A. D. 1849, Lorinzo Sherwood, one of the solicitors and of counsel for complainants in the above cause, and also of counsel on the part of the creditors mentioned in the bill of complaint and answer of Stewart Newell, as being the creditors of "Stewart Newell & Co.," and who being by me duly sworn, deposes and says, that in the month of October last past he had a long and explicit conversation with William Tyack, one of the complainants in the above cause; that the conversation related to what had been done in the progress of this cause, and as connected therewith, and of the steps and proceedings on the part of William E. Warren, under whose direction, as agent and attorney in fact, the cause had been commenced; that the said Tyack, at that time, told defendant that he had been informed, through the committee on the part of the creditors, of the general nature of what had been done; and further stated that said Warren, he thought, had been very faithful, and had done every thing for the best; that Newell had been very fraudulent, in his belief, and he hoped the creditors would be able to hold the property.

And deponent further says, that said Tyack afterwards made an appointment to meet deponent at his office in New York about the middle of November last; that when said Tyack came to deponent's office, he informed deponent that he had come to talk over matters in relation to the suit at Galveston; that deponent had a conversation of two or three hours with said Tyack, and in which he informed said Tyack minutely and in detail, as to the course taken by Mr. William E. Warren, at Galveston—the commencement of the cause in the State district court,

its discontinuance, the commencement of this cause, its progress, the incidents of the litigation, and the facts of the case generally, as connected with the litigation of this cause up to that time. And the deponent further says, that he intend to, and believes he did give an accurate detail of all the essential facts connected with the litigation of this cause up to that time; and deponent has no doubt said Tyack understood definitely the said facts as detailed, what had been done by said Warren, the proceedings taken in the cause, and the progress and situation of the cause up to that time, as far as a man of said Tyack's capacity could be made to comprehend the nature of judicial proceedings and their incidents.

And this deponent further says, that said Tyack, duringsaid last mentioned conversation, expressed to deponent his entire satisfaction as to what said Warren had done, and as to the efforts of the counsel he had engaged; that said Tyack thus stated to deponent, that it was lucky for him and the creditors that Warren went out to Galveston; that if he had not gone Newell and his gang would undoubtedly have got all the property away, so that the creditors would never have got any thing; that as it was, pretty much all they ever could get would be the property at Galveston; that the most he, Tyack, would be able to do, would be through the assistance of some friends to pay them ten per cent. on their demands, in addition to what they might get at Galveston. Deponent further says, that said Tyack, in the conversation spoke of an agreement between complainants and the creditors, by which each was to pay one-half the expenses attendant upon said Warren's coming out to Galveston, and in the litigation of the property; that said Tyack remarked to the deponent that the creditors would have to bear the whole burthen, as he should be unable to pay any thing, and as it turned out Murray was a great deal worse than nothing. Deponent further says, that in the said conversation Tyack spoke of Murray's attempted revocation of the power of attorney to Warren; that in reference to that he said Murray had behaved badly, but that it was of a piece (deponent thinks that was the expression) of his double dealings throughout. And deponent further says, that the contract, as stated by Tyack, as to the payment of expenses, &c., has been stated to deponent by several of the creditors mentioned in the bill of complaint, and more especially by the committee appointed on the part of said creditors to take care of their interest, Messrs. Draper, Brewster, and Spicer. Deponent further says, that he has had no other or different understanding from the commencement of the suits here, that such was the agreement. And deponent further says, that some time subsequent to the date of the pretended letter from Tyack to J. Swett, he received a letter from his correspondent in New York in answer to one written by deponent to said correspondent, suggesting that some manœuvre was probably afoot to operate on Tyack, with a view of getting him to revoke the power of attorney to Warren, and requesting him to see Mr. Draper and have him see Tyack; that said correspondent stated that he had so done; that Draper had seen Tyack, and that no revocation would be got from him.

And deponent further says, that from his conversation and acquaint-

ance with the said William Tyack, he regards and believes him a man of feeble health and intellect, and capable of being easily imposed upon; and further says, from his knowledge of the facts, as connected with the litigation of this cause, and coming to him through his professional engagement in the same, deponent has just cause to believe, and does fully believe, beyond a doubt, that the said pretended letter from said Tyack to J. Swett, and notice of which was given, and copy served, on deponent on the evening of *of* the 2d June instant, as matter to be read in evidence on motion to dismiss this cause, was and is a forgery, or that the contents of the same were fraudulently substituted for some thing else in obtaining the signature of the said Tyack with a view to deceive and impose upon him; or if the signature of the said Tyack was obtained to the said pretended letter, with his knowledge of its contents, that he had been deceived and imposed upon by false and fraudulent representations of some person or persons engaged in the defence of this cause.

Deponent further says that he has despatched copies of the motion papers, and also a copy of the pretended letter, a copy of which was served on him, to his correspondent in New York, by the mail leaving Galveston on the 3d of June inst., with directions to have the matter immediately investigated as to the pretended letter of said Tyack, bearing date on the 20th March, 1849. That deponent expects to get returns from the said papers, with the result of such investigation, in the earliest possible time.

Deponent further says, that the pretended letter to J. Swett purports to have been post marked on the 5th of April; that the same would have arrived at Galveston by the ordinary course of the mail in about fifteen days; that the same, as deponent believes, has been kept in the possession of the said Swett for near six weeks, without any notice or intimation to complainants' solicitors that any such letter had been received, or any other communication from said Tyack to him; and further says, that the first notice or intimation to deponent that any such letter was in existence was when the notice was served on Saturday evening, the 2d of June instant. And this deponent, as solicitor and counsel on the part of the complainants, with the assent of associate counsel, in case this honorable court should admit the said pretended letter of Tyack to be read in evidence on the motion to dismiss in this cause, and should deem the same in any way important or necessary to be answered to, to prevent a dismissal of the cause, would ask for a continuance of the cause, in the full belief and expectation that the complainants will be enabled to prove and show to the court that the said pretended letter is an attempted fraud upon the said William Tyack.

And this deponent further asks that the said letter may be put on the files of this court, that a copy of the same may be entered by the clerk on the minutes, and that the original letter may be annexed to a commission to be sent to New York, and, if necessary, that the time for taking testimony in this cause may be extended. And deponent

further says, that the creditors mentioned in the bill of complaint in [this cause] have contributed in expenses, under their said agreement with complainants, the amount of two thousand dollars and over, to deponent's knowledge : and further says, he is informed and believes the same to be true; that they have paid and contributed in the whole, under their said agreement, the amount of over three thousand dollars. And deponent further says, that the amount paid, and for which the said creditors would become liable, and for which they have incurred responsibilities in good faith, in case this cause was dismissed, would not, in the opinion of this deponent, fall short of five thousand dollars; and, as deponent further believes, the said creditors would have no means of redress or compensation, owing to the insolvency of complainants.

(Signed) LORENZO SHERWOOD.

Subscribed and sworn to before me, 5th June, 1849.

(Signed) JAMES LOVE, *Clerk*.

And afterwards, on the same day, to wit, on the 2d day of August, A. D. 1849, complainants, by their solicitors, filed the following affidavit, to wit:

United States district court, district of Texas. (In equity.)

WILLIAM TYACK & LINDLEY MURRAY
vs.
STEWART NEWELL & STEPHEN W. DOSS.

Lorenzo Sherwood, one of the solicitors of the complainants, being duly sworn, says: That F. H. Merriman, esq., H. W. Wagner, and himself were regularly employed as the solicitors and of counsel for the complainants, in the above cause, at the time of the institution of this suit; that such retainer was made by William E. Warren, the agent and attorney in fact of complainants, whose power of attorney is on file in this court. And deponent further says, he has heretofore been of the opinion that Tyack, one of the complainants, has been in some way imposed upon, either in the representation of the facts of this case, as they have been presented to the court, or in some other way, and that such imposition has proceeded from some one interested in the defence of the case; that, in consequence of it, he may have attempted to interfere with the prosecution of the cause; that, on the other hand, if the said Tyack has acted advisedly, and with a full knowledge of the facts as they have been presented to the court, deponent believes said Tyack is in collusion with said Murray and the defendants in the cause to defraud the creditors of "Stewart Newell & Co.;" in either of which cases, should the court so conclude, it is insisted the bill in this cause should not be dismissed.

And deponent further says that neither of the complainants have, to deponent's knowledge or belief, paid any costs, fees, or expenses in-

curred in the prosecution of this suit, and that a large amount is now due.

LORENZO SHERWOOD.

Sworn and subscribed before me, this 2d day of August, 1849.
A. M. HUGHS, *Com'r.*

And afterwards, on the same day, to wit, on the 2d day of August, A. D. 1849, the defendants, by their counsel, filed the following exemplification of a judgment roll; which said exemplification is in words and figures as follows, to wit:

The people of the State of New York, by the grace of God free and independent. To all to whom these presents shall come, greeting:

Know ye, that we, having inspected the records of our supreme court, do find remaining there of record a certain judgment roll in the words and figures following, to wit:

SUPREME COURT.

GEORGE W. BROWN
against
WILLIAM TYACK, Stewart Newell, and Lindley Murray, junior.

Summons for money demand on contract.

To William Tyack. Sir: You are hereby summoned to answer the complaint in this cause, of which a copy is herewith served upon you, and serve a copy of your answer on me at my office, number 29 Beekman street, within twenty days after the service hereof, exclusive of the day of such service; and if you fail to answer the complaint, as aforesaid, the plaintiff will take judgment for the sum of fifteen hundred and twenty-eight dollars and twenty-nine cents, with interest from the thirtieth day of August, one thousand eight hundred and forty-eight, besides costs of suit.

W. K. THOM,
Plaintiff's attorney.

Dated August 29, 1848.

SUPREME COURT,
County of New York.

GEORGE W. BROWN
against
WILLIAM TYACK, Stewart Newell, and Lindley Murray, junior.

Complaint for moneys generally.

The complaint of the above named plaintiff respectfully shows to this court that the defendant is indebted to the plaintiff, for moneys by

the said plaintiff lent to the said defendant, in the sums, at or about the dates and under the circumstances following, that is to say:

1848.	May	20,	to cash lent defendant by plaintiff,		-	$150 00
	"	30	"	"	" - -	54 20
	June	6	"	"	" - -	100 00
	"	14	"	"	" - -	150 00
	"	17	"	"	" - -	100 00
	"	20	"	"	" - -	100 00
	"	21	"	"	" - -	250 00
	July	8	"	"	" - -	60 00
	"	15	"	"	" - -	60 00
	Aug.	3	"	"	" - -	66 71
	"	3	"	"	" - -	57 64
	"	5	"	"	" - -	80 00
	"	5	"	"	" - -	80 00
	"	5	"	"	" - -	30 00
	"	12	"	"	" - -	70 00
	"	12	"	"	" - -	105 00
						$1,513 65

Which together amount to the sum of fifteen hundred and thirteen dollars and sixty-five cents, with interest from the above dates respectively, for the respective sums set opposite said dates, for which the plaintiff demands judgment.

W. K. THOM,
Plaintiff's attorney.

CITY AND COUNTY OF NEW YORK, *ss.*

William K. Thom, the attorney for the plaintiff in this action, being duly sworn, says that he believes the foregoing complaint be true.

W. K. THOM.

Sworn to before me this 29th day of August, 1848.

JAMES LOZIER,
Commissioner of deeds.

(Endorsed.)

Supreme Court, George W. Brown against William Tyack, Stewart Newell, and Lindley Murray, junior; summons and complaint, W. K. Thom, plaintiff's attorney, 29 Beekman street, New York.

SUPREME COURT.

GEORGE W. BROWN
against
WILLIAM TYACK, Stewart Newell, and Lindley Murray, junior.

To W. K. THOM, esq., *attorney for plaintiff.*

SIR: I, William Tyack, one of the above defendants, hereby offer

to the plaintiff to allow judgment in this action to be taken against me for the sum of fifteen hundred and twenty-eight dollars and twenty-nine cents, and costs allowed by law.

WILLIAM TYACK.

Dated New York, September 9, 1848.

SUPREME COURT.

GEORGE W. BROWN
against
WILLIAM TYACK, Stewart Newell, and Lindley Murray, junior.

To W. TYACK, *one of the above defendants.*

The plaintiff accepts your offer, dated 9th September instant, to allow judgment in this action to be taken for fifteen hundred and twenty-eight dollars and twenty-nine cents, and costs allowed by law.

Dated New York, September 9th, 1848.

W. K. THOM,
Attorney for plaintiff.

SUPREME COURT.

G. W. BROWN
vs
WILLIAM TYACK and others.

CITY AND COUNTY OF NEW YORK, *ss.*

William K. Thom, being duly sworn, doth depose and say, that he served on the above defendant, W. Tyack, personally, a copy of the within acceptance, by handing the said copy to him personally, on this 9th day of September, 1848.

W. K. THOM.

Sworn to before me this 9th September, 1848.

JAMES LOZIER,
Commissioner of deeds.

(Endorsed.)

Supreme Court, George W. Brown vs. William Tyack, Stewart Newell, and Lindley Murray, junior; acceptance of offer of defendant Tyack, and affidavit of service on first defendant.

SUPREME COURT.

GEORGE W. BROWN
against
WILLIAM TYACK, Stewart Newell, and Lindley Murray, junior.

Statement for judgment.

Amount claimed in summons - - -		$1,513 65
Interest - - - - - -		14 64
		$1,527 29
Costs by statute - - - -	$7 00	
Clerk entering judgment - - -	1 00	
Affidavit - - - -	0 50	
Transcript - - - - -	0 00	
Postage - - - - -	0 00	
Sheriff's fees - - - -	0 19	8 69
		$1,536 98

CITY AND COUNTY OF NEW YORK, *ss.*

W. K. Thom, the plaintiff's attorney in the above action, being duly sworn, says that the disbursements above mentioned have been made in this action.

W. K. THOM.

Sworn to before me this 9th day of Sept. 1848.

ANDREW WARNER, *Dep. Clk.*

Supreme court.

GEORGE W. BROWN vs. WM. TYACK, Stewart Newell, and LINDLEY MURRAY, jr. } Judgment.

Sept. 9th, 1848. The summons and copy of complaint in this cause having been duly served on William Tyack, one of the above defendants, on the thirtieth day of August, 1848, the other defendants not having been found or served with said summons and complaint, and the said defendant, William Tyack, having offered to the plaintiff to allow judgment in this action, for fifteen hundred and twenty-eight dollars and twenty-nine cents and costs allowed by law, and which the plaintiff accepted: Now, on motion of W. K. Thom, plaintiff's attorney, it is hereby adjudged that George W. Brown, the plaintiff, recover of the above defendants the sum of fifteen hundred and twenty-eight dollars and twenty-nine cents, the amount claimed, and interest, with eight dollars and sixty-nine cents, costs and disbursements, amounting in the whole to fifteen hundred and thirty-six dollars and ninety-eight cents.

(Endorsed.)

Supreme court.

GEORGE W. BROWN
vs.
WM. TYACK, Stewart Newell, and LINDLEY MURRAY, jr.

Judgment roll.

W. K. THOM, *Atty.*

Entered amount and interest - -	$1,528 29
costs and disbursements - - -	8 69
	$1,536 98

Filed Sept. 9, 1848, at 3 o'clock, a. m.

All which we have caused by these presents to be exemplified, and the seal of our said supreme court to be hereunto affixed. Witness the honorable Samuel Jones, presiding justice of said court in the city of New York, this 13th day of July, 1848.

JAMES CONNER, *Clerk.*

I, Samuel Jones, presiding justice of the supreme court of the State of New York, do certify, that James Conner, whose name is subscribed to the preceding exemplification, is clerk of the said court, duly elected and sworn, and that full faith and credit are due to his official acts. I further certify, that the seal affixed to the said preceding exemplification is the seal of the said supreme court, and that the attestation thereof is in due form of law.

Dated this 13th day of July, 1848, at the city of New York.

S. JONES.

And afterwards, on the 3d day of August, A. D. 1849, the defendant, S. W. Doss, filed the following letter of attorney, to wit:

THE STATE OF TEXAS,
County of Brazoria.

Know all men by these presents, that I, Stephen W. Doss, of the county of Brazoria, have ordained, constituted, made, and appointed, and by these presents doth ordain, constitute, make, and appoint, Peter MacGreal, of the county of Brazoria, my true and lawful attorney, for me, and in my name, to ask, demand, sue for, recover, and receive, of and from all persons whatsoever, all and any sum and sums of money, due and owing, or to become due and owing to me on any and every account, to give receipts and acquittances for the same, or at his discretion to compound, compromise, and agree for the same, and give discharges; and also for me and in my name to sign any bond, obli-

gation, contract, or agreement, or other paper whatsoever, to draw and endorse promissory notes, and the same to renew, to draw upon any bank or banks, individual or individuals, for any sum of money that may be to my credit, or which I may be entitled to receive, and the same to deposit in any other bank, and again at his pleasure to draw for, from time to time as myself might or could do, and also for me and in my name to sell any part or parts of my real estate which I am entitled to in my own right, or in common with others, or howsoever I may be entitled to the same; and to make all necessary deeds, conveyances, and assurances, and also for me and in my name to do all such other acts, matters, and things in relation to my property, estate, affairs, and business of every kind, as I myself might or could do if personally present and acting therein; it being my intention by this letter of attorney to commit to the said Peter MacGreal the entire management, care, and disposition of my affairs and property as fully and absolutely as I have now the care, management, and disposition of them, and that this power should be understood and taken in the most comprehensive sense. And I authorize him attorneys one or more under him to substitute and again at pleasure to revoke.

In witness whereof I have hereunto set my hand and seal this 13th day of March, A. D. 1849.

Five words erased on fifth line from bottom of the foregoing page before signing.

STEPHEN W. DOSS. [SEAL.]

Sealed and delivered in presence of—
W. S. SPENCER,
F. McGREAL.

THE STATE OF TEXAS,
County of Brazoria.

Before me, Edward Purcell, chief justice of the county aforesaid, personally came and appeared W. S. Spencer, to me well known, and one of the subscribing witnesses to the execution of the foregoing instrument of writing, and who being duly sworn, deposed that he was present, and did see Stephen W. Doss, whose signature appears at the end of the foregoing instrument, sign and seal the same, for the purposes therein expressed and set forth, and that he witnessed the same at the request of the said S. W. Doss.

In faith and testimony whereof I have hereunto set my hand and affixed my official seal at Brazoria, this 18th day of May, A. D. 1849. [SEAL.]

EDWARD PURCELL,
Chief justice, county of Brazoria.

And afterwards, to wit, on the third day of August, A. D. 1849, the motion of complainants, filed on the first day of August instant, to dis-

miss said cause, came on to be heard; whereupon the court made the following order, which was entered upon the minutes of the court in the words and figures following, to wit:

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss.

The motion of the complainants, filed on the first of August, 1849, by Eben. Allen and W. G. Hale, their solicitors and counsel, to dismiss the above entitled cause, this day coming on for argument, and the arguments by their said solicitors and counsel on behalf of complainants thereon in support of the same, and of Lorenzo Sherwood and Franklin H. Merriman, claiming to act as solicitors and counsel for the said complainants and the creditors mentioned in the original and amended bill in opposition thereto, being heard, and the same being maturely considered by the court, it is hereby ordered, adjudged, and decreed that the said motion be sustained, and that the said cause be, and the same is hereby, dismissed.

And afterwards, to wit, on the same day, August 3d, 1849, the defendants filed the following motion; which motion is in words and figures as follows, to wit:

UNITED STATES DISTRICT COURT,
District of Texas.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss.

On behalf of S. W. Doss, one of the defendants, we move the court to order that the receiver redeliver and restore to him the property and proceeds taken out of his possession in this case.

August 3d, 1849.

O. F. JOHNSON,
A. P. THOMPSON,
Solicitors for Doss.

And afterwards, on the 7th day of August, A. D. 1849, Messrs. Sherwood and Wagner, and F. H. Merriman, filed their petition for a rehearing of the motion to dismiss said cause, in the words and figures following, to wit:

UNITED STATES DISTRICT COURT,
District of Texas.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss.

To the honorable the district court of the United States, for the district of Texas, the petition of the complainants in the above cause respectfully showeth:

That in the opinion and belief of your petitioners the bill of com-

plaint in this cause could not properly or rightfully be dismissed, or the solicitors originally employed in the cause interfered with, unless on the joint application of all the persons or parties beneficially interested in the prosecution of the suit; your petitioners further show that, from the records, papers, and proceedings on file in this cause, the following points appear in the case, and are made the ground of an application for a rehearing of the motion to dismiss the bill made by Messrs. Allen & Hale, esqrs., and also the motion to strike that motion from the docket made by Messrs. Merriman, Sherwood & Wagner, which are as follows, viz:

1st. The powers of attorney by complainants and the creditors to William E. Warren, in connexion with the agreement entered into, and money expended in pursuance of the agreement, gave the creditors a sufficient control over the suit through the joint agent to prevent the complainants from dismissing the bill without the assent of the creditors.

2d. The money advanced by the creditors to the amount of $3,000, or more, as shown by proff, has been expended in pursuance of the agreement and powers of attorney, to create a trust fund in the hands of the receiver, for the joint benefit of the creditors and complainants; that is, to pay the creditors, and discharge so much of the obligation of complainants to them.

3d. The fund or property in the hands of the receiver being in the nature of a trust fund, cannot be interfered with or disposed of by complainants, without the joint assent of all persons interested.

4th. It is competent for a person or persons having a beneficial interest in a suit to prosecute it in the name of another person, if the circumstances require it; and the consent to bring the action, whether expressly given, or implied from the nature of the contract, if founded on a consideration, cannot be withdrawn.

5th. It was not competent for the complainants to employ solicitors to interfere with the suit, or those previously employed, unless upon the charge of misconduct on the part of the solicitors originally employed, the beneficial interest being in the creditors to the full amount of the property in the hands of the receiver.

6th. It would not be competent for the complainants to violate the contract with the creditors, without placing the creditors on their original footing; and when they ask the court to allow them to violate the contract by way of motion, it is insisted the court should make them do equity, or hold them to performance, so far as to permit the exercise of the power given by them.

7th. If it should be considered that the creditors have no beneficial interest that could be protected by the court on the ground of a contract, the conclusion is inevitable, from the whole circumstances appearing in the case, either that the complainants have been fraudulently imposed upon, or that they are in collusion with the defendants, in either of which cases the court should arrest their efforts to dispose of the case.

Your petitioners therefore pray that a rehearing of the said motion may be had upon the foregoing grounds, and that such relief may be granted as may be agreeable to equity.

And your petitioners, &c.

Dated Aug. 4th, 1849.

MERRIMAN, SHERWOOD & WAGNER,
Sol's, and of counsel for comp'ts.

We, the undersigned, do certify, that we have examined the proceedings, record, and proof in the above cause, and that in our opinion a rehearing of the motion to dismiss, made by Messrs. Allen & Hale, should be had, that justice may be done.

Dated Aug. 4, 1849.

M. M. POTTER,
W. ALEXANDER.

And afterwards, on the 9th day of August, A. D. 1849, the defendants, by their counsel, filed their motion for a restitution of the goods, &c., in controversy in this cause, in words and figures following, to wit:

In the dist. court of the U. S., for the dist. of Texas.

WILLIAM TYACK & LINDLEY MURRAY
vs.
STEWART NEWELL & STEPHEN W. DOSS.

On behalf of Stephen W. Doss, one of the above named defendants, we move the court to order and direct N. B. Yard, the receiver in this case, to deliver to the said Doss all the goods, wares, and property taken out of his possession, and that of his agent, by virtue of the proceedings in this case, and to pay over to him all the money received on account of the sales, if any, of said property, and all bonds, notes, or evidences of debt, taken in part payment or security thereof for such sales; and further, to order and direct said receiver forthwith to make a full report of all his acts and proceedings in this case, together with a full statement of all the property received by him, the portion sold, the cash, notes, bonds, &c., on hand, and the expenditures made or discharged on account of the said property, or otherwise arising in this suit.

O. F. JOHNSON,
A. P. THOMPSON.
Solicitors for S. W. Doss.

August 9th, 1849.

The clerk will please enter this motion in the place of the motion made on the third day of August inst., and the said motion last named is hereby withdrawn.

And afterwards, to wit, on the 14th day of August, A. D. 1849, the

motion of Franklin H. Merriman and Sherwood & Wagner, for a rehearing on the motion heretofore made to dismiss this cause, came on to be heard; whereupon the court made the following order and decree, to wit:

TYACK & MURRAY
vs.
STEWART NEWELL et al.

On this day came on for hearing the motion of F. H. Merriman, Lorenzo Sherwood, and Handl. W. Wagner, assuming to act as solicitors for complainants, by the authority granted to William E. Wawarren, and their employment by said Warren, as solicitors on behalf of the complainants and the creditors of Stewart Newell & Co., for a rehearing of the order and decree of this court, made and entered on the 3d day of August instant, dismissing the said bill of complainants, the argument of counsel being heard, and the court being now sufficiently advised, is of opinion that the motion be overruled; it is therefore ordered that the former judgment and decree of this court, dismissing the complainants' bill, be affirmed; and it is further ordered that the defendants recover of the complainants the costs incident to this motion, to be taxed by the clerk, &c.

And afterwards, to wit, on the fourteenth day of August, A. D. 1849, Messrs. Allen and Hale, solicitors, filed the following document, to wit:

GALVESTON, *August* 1, 1849.

GENTLEMEN: In the case of William Tyack and Lindley Murray vs. Stewart Newell and Stephen W. Doss, pending in the district court of the United States for the district of Texas, I am authorized to employ you as solicitors and counsel for the plaintiffs, to assume the entire control and management of the cause in this behalf, and as such you are specially to apply for and obtain a dismissal of the suit.

S. B. ANDREWS.

To Messrs. ALLEN and HALE, esqs.

And afterwards, on the same day, to wit, on the 14th day of August, A. D. 1849, F. H. Merriman, Lorenzo Sherwood, and Handl. W. Wagner gave notice of appeal from the decision of the court dismissing this cause; whereupon the following entry was made upon the minutes by order of the court, to wit:

SAME
vs.
SAME.

And now on this day, that is to say, the 14th day of August, A. D. 1849, came the complainants' original solicitors, F. H. Merriman, Lorenzo Sherwood, and Handl. W. Wagner, and assuming to act in the name of complainants, by the authority granted to William

E. Warren, and their employment by said Warren as solicitors in behalf of the complainants and the creditors of Stewart Newell & Co., and gave notice of appeal from the decision and decree of this honorable court dismissing the above cause; which appeal is claimed and stated to be made in behalf of the creditors, and on the ground that the said creditors are and were beneficially interested in this suit, and that it was not competent for the complainants to dismiss this cause.

And afterwards, to wit, on the 16th day of August, F. H. Merriman, Lorenzo Sherwood, and Handl. W. Wagner, the original solicitors for complainants in this cause, filed an appeal bond in this cause, which bond is in the words and figures following, to wit:

Know all men by these presents, that we, Henry Hubbell and Michael Seiligson, of the city and county of Galveston, in the State of Texas, are held and firmly bound unto Stewart Newell and Stephen W. Doss, in the penal sum of six thousand dollars, to be paid to the said Stewart Newell and Stephen W. Doss, their heirs, executors, administrators, or assigns; and to which payment well and truly to be made to the above named obligees, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 15th day August, A. D. 1849.

Whereas in a suit in the district court of the United States, for the district of Texas, in which William Tyack and Lindley Murray are complainants, and the said Stewart Newell and Stephen W. Doss are defendants, (in equity,) a final decree has been entered in the said court dismissing the said cause; and whereas a motion of appeal has been entered on the records of the said court in the words and figures following, that is to say.

UNITED STATES DISTRICT COURT,
District of Texas.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss. } In equity.

And now at this day, that is to say, on the 14th day of August, A. D. 1849, comes the complainants' original solicitors, F. H. Merriman, Lorenzo Sherwood, and Handl. W. Wagner, and assuming to act in the name of the complainants, by the authority granted to William E. Warren, and their employment by said Warren as solicitors in behalf of the complainants and the creditors of Stewart Newell & Co., and give notice of appeal from the decision and decree of this honorable court dismissing the above cause, which appeal is stated and claimed to be made in behalf of the said creditors, and on the ground that the said creditors were and are beneficially interested in this suit, and that it is not competent for the complainants to dismiss this cause.

MERRIMAN, SHERWOOD & WAGNER,
Solicitors on behalf of the said creditors, and assuming of right to act in the name of complainants.

Now, therefore, the condition of this obligation is such, that in case the said appeal shall be prosecuted to effect and without delay, and the said complainants, William Tyack and Lindley Murray, or the said creditors whose names are annexed to a power of attorney to William E. Warren, on file in said district court, and who claim to be beneficially interested in this cause, or any other person in behalf of the said complainants or creditors therein named, shall well and truly pay, or cause to be paid, unto the said Stewart Newell and Stephen W. Doss, or either of them, all such damages, costs, and expenses as may be awarded or decreed in their favor, or any such damages, costs, and expenses as may [be] decreed or awarded against the complainants on said appeal for any cause whatsoever, or any damages, costs, or expenses that may be awarded by the said Supreme Court against the said creditors, or by the said district court, in case the said cause shall be remanded for further adjudication in said district court, then the above or foregoing obligation to be void, otherwise to remain in full force and virtue.

HENRY HUBBELL, [SEAL.]
M. SEILIGSON. [SEAL]

I certify that the foregoing bond was taken and acknowledged, the penalty fixed, and the security approved by me, this 16th day of August, A. D. 1849.

JOHN C. WATROUS.

And afterwards, on the same day, the original counsel for complainants in this cause filed a bond of indemnity on appeal of said cause to the Supreme Court of the United States, which bond is in the words and figures following, to wit:

Know all men by these presents, that we, Henry Hubbell and Michael Seiligson, of the city and county of Galveston, are held and firmly bound unto William Tyack and Lindley Murray, their heirs, executors, administrators, and assigns, in the penal sum of one thousand dollars, to be paid to the said William Tyack and Lindley Murray, their heirs, executors, administrators, or assigns; and to which payment, well and truly to be made, we bind ourselves, and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 15th day of August, A. D. 1849.

Whereas a suit in the United States district court for the district of Texas, (in equity,) in which the above named obligors are complainants, and Stewart Newell and Stephen W. Doss are defendants, a final decree has been entered in the said cause dismissing the bill of complaint therein, and motion of appeal has been entered on the records of the court in the words and figures following, that is to say:

UNITED STATES DISTRICT COURT,
District of Texas.

(In equity.)

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss.

And now, at this day, that is to say, on the 14th day of August, A. D. 1849, came the complainants' original solicitors, F. H. Merriman, Lorenzo Sherwood, and Handl. W. Wagner, and assuming to act in the name of complainants by the authority granted to William E. Warren, and their employment by said Warren as solicitors in behalf of the complainants and the creditors of Stewart Newell & Co., and give notice of appeal from the decision and decree of this honorable court dismissing the above cause, which appeal is claimed and stated to be made in behalf of the said creditors, and on the ground that the said creditors were, and are, beneficially interested in this suit, and that it was not competent for the complainants to dismiss this cause.

MERRIMAN, SHERWOOD & WAGNER,
Solicitors on behalf of the said creditors, and assuming of right to act in the name of complainants.

And now, therefore, the condition of this obligation is such, that if the said creditors, whose names appear to a power of attorney to William E. Warren on the files of the said district court in this cause, or any person in their behalf, or in the behalf of the said complainants, shall well and truly pay, or cause to be paid, all such damages, costs, and expenses as may be awarded against them on said appeal, the *the* said Supreme Court of the United States, or by the said district court in case the said cause shall be remanded for further adjudication in the said district court; and shall fully indemnify and save harmless the said complainants, for or on account of any thing connected with the said appeal to the Supreme Court, then the above obligation to be void, otherwise to remain in full force and virtue.

HENRY HUBBELL, [SEAL.]
M. SEILIGSON. [SEAL.]

I certify that the foregoing bond was taken and acknowledged and the security approved by me, this 16th day of August, A. D. 1849.

JOHN C. WATROUS.

Upon which said bond is the following endorsement, to wit:

"This bond is filed and tendered as security to the complainants, and to indemnify them on the appeal taken in this cause to the Supreme Court of the United States.

"August 16th, 1849.

"MERRIMAN, SHERWOOD & WAGNER,
Solicitors for complainants."

1447.

And afterwards, to wit, on the 17th day of August, A. D. 1849, Ebenezer Allen and William G. Hale, solicitors for complainants, in open court, moved to have their protest against an appeal in this cause entered upon the minutes, which by leave of the court was done, in words and figures following, that is to say:

TYACK & MURRAY
vs.
NEWELL & DOSS.

On motion of Ebenezer Allen and William G. Hale, solicitors for complainants, and by leave of the court, it is ordered that the following protest be entered on the minutes of this court:

"The said complainants, William Tyack and Lindley Murray, by Ebenezer Allen and William G. Hale, their solicitors and counsel, solemnly protest against any appeal in this cause being taken or granted to the Supreme Court of the United States, in the name or names of said complainants, or either of them."

EBEN. ALLEN and
WM. G. HALE,
Sol's and counsel for complainants.

And afterwards, on the 21st day of August, Ebenezer Allen and William G. Hale filed their motion to take from the files of the court the application made by Messrs. Merriman, Sherwood & Wagner, for an appeal in this cause, in the words and figures following, to wit:

In the district court for the district of Texas, May term, 1849. In chancery.

WILLIAM TYACK & LINDLEY MURRAY
vs.
STEWART NEWELL & STEPHEN W. DOSS.

And now the said complainants, Wm. Tyack and Lindley Murray, by Ebenezer Allen and Wm. G. Hale, their solicitors and counsel, move the court that the paper filed in this cause on the 21st of August, as of the 14th of the same month, purporting to be an application for an appeal by them, the said complainants, from the final decree in this cause to the Supreme Court of the United States, be taken off the files of this court, because the said paper was placed there irregularly, by persons professing to act in this behalf as the solicitors of the said complainants, without authority, and against their interest and express instructions; and, further, because the said final decree was rendered at the instance and upon the motion of the said complainants, and they do not wish the same appealed from or changed. All which appears from the records of this cause.

ALLEN & HALE,
Sols. and counsel for the said comp'ts.

And afterwards, to wit, on the 21st day of August, A. D. 1849, the

affidavit of Ulysses B. Brewster was placed upon the files of this court in this cause, which affidavit is in words and figures as follows, to wit:

United States district court, district of Texas. In equity.

WILLIAM TYACK & LINDLEY MURRAY
vs.
STEWART NEWELL & STEPHEN W. DOSS.

Ulysses B. Brewster, of the city and county of New York, in the State of New York, being duly sworn, doth depose and say, that heretofore, to wit, in the month of April or May, 1848, the said William Tyack & Lindley Murray executed a power of attorney to one William E. Warren, which this deponent is informed is now on the files of this court, at Galveston, or is in some way connected with the records and proceedings in this cause, so that this court has cognizance of the same, and of the contents thereof.

And this deponent further says, that, at the time of the execution of said power of attorney by said William Tyack and Lindley Murray, this deponent and others, creditors of the said Tyack, Murray & Newell, in consideration thereof, and by agreement with the said William Tyack that any proceedings that should be taken by said Warren, either by suit or otherwise, to obtain the possession of the property then in the hands of Stewart Newell, at Galveston, or the avails thereof, should inure to the benefit of the creditors of said Tyack, Murray & Newell, the said creditors agreed with said Tyack to postpone the time for the payment of their debts, as against said Tyack and company and Newell and company, sixty days, or thereabouts, from that time; and also did agree, to and by their [power] of attorney duly executed for that purpose, did at the same time make the said Warren their agent and attorney, with full power to protect their interest in the premises, and in conjunction with the said power from William Tyack and said Murray to do whatever *whatever* in his judgment and discretion should be necessary and proper to be done, as well to protect the interest of said creditors of said Tyack & Murray.

And this deponent further says, that *that* at the time of the appointment of the said Warren as such attorney, said Tyack & Murray —— for said creditors, who, as this deponent is informed, are the creditors mentioned in the said proceedings in this cause, it was well understood and agreed, by and between said Tyack & Murray and the said creditors, that the said Warren should go to Galveston, and that whatever he might take in the premises should be taken as well for the benefit of said creditors as of said Tyack & Murray, and that whatever might be obtained, either by suit or otherwise, should be applied to the payment of the debts of said creditors against said Tyack, Murray, & Newell; and in consideration of such understanding and agreement, and in consideration of the execution of said power of attorney by said Tyack & Murray, the said creditors agreed to pay a part of the expenses of said Warren to Galveston and back from the city of New York, and to pay also for his services in the premises, and such costs, counsel fees,

disbursements, and expenses as might be incurred in the premises, or their share thereof.

And this deponent further says, that this suit was fully and properly authorized to be commenced by the said Warren; that the same, as this deponent believes, was properly instituted; that this deponent and others, the said creditors, have paid and incurred a large amount for the expenses and services of said Warren, and for costs, counsel fees, expenses, and disbursements in said suit; and that this deponent and others, the said creditors, became and are deeply interested in the prosecution of said suit, and in the full and complete execution of the trusts reposed in said Warren, as well by said Tyack & Murray as said creditors.

And this deponent further says, that, by reason of the execution of said powers by said Tyack and Murray, said creditors, and of the money expended, and costs and expenses incurred as aforesaid by said creditors, as well as by an understanding and agreement with said Tyack as well before as since said suit was commenced, this deponent and others, said creditors, are entitled to the benefit of this suit, and to have the same prosecuted and continued in the names of the said Tyack and Murray.

And this deponent further says, that, after the return of said Warren from Galveston, and after the said William Tyack had been fully apprized of the course that had been pursued by him, and of the institution of said suit, the said Tyack approved of the course taken by said Warren under said powers of attorney, and expressed his approval to this deponent.

And this deponent further says, the said Tyack knew and contemplated that said suit was designed and intended for the benefit of said creditors; that, long after said suit was commenced, and after the expiration of the time extended to said Tyack & Co. for the payment of said debts, to wit, in the month of October or November, 1848, this deponent and his partners, Johnson T. Lee and Henry B. Hall, commenced a suit against said Tyack, Newell & Murray, in New York supreme court, in which said suit said Tyack interposed a plea, sworn to by him, showing that he, said Tyack, as late as the ninth of November, 1848, contemplated that said suit in Texas was contemplated by him for the benefit of said creditors, and of which said plea the following is a copy, namely:

(*Copy, plea.*)

NEW YORK SUPREME COURT,
City and county of New York.

JOHNSON P. LEE, Ulysses B. Brewster, and Henry B. Hall,
vs.
WILLIAM TYACK, Lindley Murray, jr., and Stewart Newell.

The defendant, William Tyack, answers to the complainant in this

action, are not the holders and owners of the draft mentioned in said complaint.

This defendant further answering says, that on or about the 21st day of April, 1848, an instrument in writing was made and executed by and between the creditors of the firms of William Tyack & Co., of New York, and Stewart Newell & Co., of Galveston, Texas, composed of the above defendants; by which instrument the said creditors constituted and appointed Ulysses B. Brewster, Simeon Draper, jr., and Charles B. Spicer, of the city of New York, jointly, or any or either of them severally, their and each of their lawful attorneys, with full power for them, and in their names, place, and stead, to demand, collect, receive, compromise, and settle all notes, drafts, and claims, and demands due or to become due to the said creditors from said firms or either of them; and in pursuance of said instrument, the said creditors placed in the hands of said attorneys, or one of them, all the notes, drafts, and accounts due or to become due to the said creditors, or either of them, from the said firms, or either of them, to be settled and collected by said attorneys for the use and benefit of the said creditors. And it is provided in said instrument that all moneys collected by said attorneys, or either of them, upon said drafts, notes, or accounts, after paying all the expenses and charges of said attorneys in the premises, the nett proceeds should be distributed among the said creditors in proportion to the respective amounts of their said claims; that the said plaintiffs united in the said instrument, and that the same remains in full force, not having [been] annulled or revoked; all of which will more fully appear by reference to said instrument, and to which the defendant prays leave to refer on the trial of this cause.

And the said defendant further answering says, that the said draft set forth in said complaint has always, from the time of the execution of said instrument to the present, remained in the possession of Simeon Draper, jr., one of the attorneys aforesaid, or in the hands of the attorney of said Draper, subject to his control, and that said Draper has in no way or manner authorized the commencement of this action.

And this defendant further answering says, that, by the acceptance on said draft it was made payable at the Union Bank, in the city of New York, and that the same was not presented at said bank for payment on the day it became due.

And this defendant further answering says, that by virtue of the authority contained in the instrument above referred to the said attorneys for the said creditors appointed one William E. Warren, an attorney under them, to go to Galveston, Texas, authorizing [him] to take such lawful means in the State of Texas as he should be advised or deem necessary to obtain possession of the goods and effects of said firms of Stewart Newell & Co, and William Tyack & Co., or for the collection of the debts and demands due or to become due to the said creditors from the said firms, or either of them. And this defendant, at the request and solicitation of the said creditors, among whom were the said plaintiffs, made and executed to said Warren a power of attorney, au-

thorizing said Warren to take possession of all the property and effects of the said firms; and that said Warren did go to Galveston, and then and there obtain possession of all the goods, chattels, and effects belonging to the said firms of Newell & Co., and Tyack & Co. and still retains possession thereof; and what amount the said plaintiffs will realize upon their claims this defendant cannot state, as the matter remains undetermined in the court at Galveston.

WILLIAM TYACK.

CITY AND COUNTY OF NEW YORK, *ss.*

William Tyack, the defendant as aforesaid, being duly sworn, says, that he believes the foregoing answer to be true.

WILLIAM TYACK.

Sworn to before me this 9th day of November, 1848.

D. HOBET,
Commissioner of deeds.

And this deponent further says, that said plea is still pending in said New York supreme court, in no wise withdrawn by said Tyack, and the suit undetermined by reason of said plea.

And this deponent further says, that, upon the strength of a letter of William Tyack, placed in the hands of Joseph A Swett, the defendant's counsel in this cause, a motion has been made to this honorable court to dismiss this cause, and that such motion has been denied; that the first intimation that this deponent ever had of said Tyack's disapproval of the course pursued by said Warren was on or about the 20th day of June, 1849, when this deponent received a copy of the letter of said Tyack to said Swett, on which said motion for a dismissal of said suit was founded.

And this deponent further says, that he is informed, and believes, that the said Stewart Newell, Stephen W. Doss, and their agent or confederate, one Peter McGreal, have recently been colluding with the said William Tyack and Lindley Murray to obtain and procure a dismissal of said suit; and this deponent is also informed, and believes, that the said Peter McGreal recently visited the city of New York to obtain from said Tyack his revocation of said power of attorney to said Warren; but this deponent cannot ascertain whether he obtained the same, for the reason that the said Tyack keeps himself concealed; and this deponent and his agents have been unable to obtain access to, and an interview with, said Tyack, after repeated efforts for that purpose.

And this deponent further says, that he is apprehensive that said Tyack may have revoked, or attempted to revoke, said power of attorney to said Warren; that such apprehensions are strengthening, by the fact that said Tyack has recently threatened, as this deponent has been informed and believes, that said creditors should get nothing, unless they

would take the avails of this suit, and discharge said Tyack, Murray, and Newell from their entire indebtedness to said creditors.

And this deponent further says, that he is apprehensive that, in the event that said Tyack shall have revoked, or attempted to revoke, said power of attorney to said Warren, that another motion will be made to this honorable court to dismiss said suit.

And this defendant further says, that he is advised by counsel here, to whom the facts in this case have been fully and fairly stated, that the said William Tyack and Lindley Murray the power legally, nor *as* either of them, and that they cannot, legally or equitably, revoke said power of attorney; and that this honorable court would not, after a presentation of all the facts and circumstances in this case, dismiss this suit on the motion of said William Tyack and Lindley Murray, or of the defendant's counsel, on any instrument or authority being, or purporting to be, a revocation of the said power of attorney; but, on the contrary, that said creditors have acquired such rights in said suit, and have such interest in the prosecution thereof, that, upon a presentation of the facts, the said William Tyack and Lindley Murray should and would be restrained and enjoined from any improper interference with said suit.

This deponent therefore prays this honorable court, in the event that any other motion shall be made on the part of said Tyack, or said defendants, or their counsel, to dismiss or discontinue this suit, that the same may be denied; and in the event that this affidavit, together with the facts and proceedings before the court, shall be insufficient to defeat such motion, that then, and in that case, this cause may be continued until this defendant and said creditors shall have time to hear from their counsel at Galveston, and present all the facts in this cause, in due form, as they shall be advised.

And this deponent further says, that the paper hereunto annexed, marked A, is a copy of an agreement executed by said creditors to said Tyack, Murray, and Newell, at the time of the execution of said powers of attorney to said Warren, hereinbefore mentioned.

And this deponent further says, that, if said Tyack shall have given a revocation of said power of attorney to Warren, he believes that the same has been procured from him by said Newell, or McGreal, or some other person, upon some misrepresentation of the facts in this case; and that said Tyack, who is an aged man, declining into imbecility, has been imposed upon, in obtaining from him such power.

And this deponent further says, that he believes that the revocation given by said Murray was obtained from him upon some misrepresentation of the facts to him; that such belief is founded upon a conversation which was had between said Murray and an agent of this deponent, who saw and conversed with him, as this deponent is informed.

And this deponent further says, that said Newell gave this deponent to understand that he has control of this suit, and the property therein, and that he could give the same up to said creditors, if they would discharge said Tyack, Murray, and Newell from the residue of their in-

debtedness; and said Newell as well as said Tyack, in their interviews with this deponent, have insisted, as a condition of giving up said property, that said creditors shall release said Tyack, Murray, and Newell from the residue of said indebtedness. U. B. BREWSTER.

Subscribed and sworn to, this eighth day of July, 1849, by Ulysses B. Brewster, before me, GEO. W. MORTON,
Deputy clerk, dist. court, and U. S. commissioner, southern dist., New York.

UNITED STATES OF AMERICA,
Southern district of New York, ss.

I, James W. Metcalf, clerk of the district court of the United States of America, for the southern district of New York, do hereby certify, that I am well acquainted with the handwriting of George W. Morton, whose name is subscribed to the annexed deposition, and that the signature to the same is in his proper handwriting.

And I do further certify, that he was at the time of signing the same a United States commissioner, and deputy clerk of the district court of the United States of America, for the southern district of New York, and duly authorized to administer oaths, &c.

In testimony whereof I have hereunto subscribed my name, and affixed the seal of said district court, this eighth day of August, [L. S.] in the year of our Lord one thousand eight hundred and forty-nine, and of the independence of these United States the seventy-fourth. J. W. METCALF, *Clerk.*

To which said affidavit is annexed the following agreement, and therein referred to as marked A, to wit:

"A."

This agreement, made and entered into this 11th day of May, A. D. one thousand eight hundred and forty-eight, between the undersigned, creditors of the firms of William Tyack & Co., of New York, and Stewart Newell & Co., of Galveston, Texas, parties of the first part, and William Tyack, one of the members of the firm of William Tyack & Co., of New York, and Stewart Newell & Co., of Galveston, Texas, composed of the said William Tyack, Stewart Newell, and Lindley Murray, party of the second part.

Whereas the said William Tyack & Co., and Stewart Newell & Co., have become indebted to the said parties of the first part in divers sums of money, and, being unable to pay the same at present, are desirous to have the time of payment extended.

And whereas the parties of the first part are desirous of sending out William E. Warren as an agent, to Galveston, to ascertain whether the business of the said Stewart Newell & Co., in that place, is conducted in a safe and proper manner, and are willing to grant an extension of time, provided the said party of the second part will consent to the send-

ing out of the said William E. Warren as aforesaid; and the said party of the second part having consented thereto, and given said Warren a power of attorney to act for him in the premises—

Now, therefore, this indenture witnesseth, that the said parties of the first part, for and in consideration of the sending of the said Warren, and giving the power of attorney as aforesaid, and of the sum of one dollar to each of them in hand paid, the receipt whereof they hereby severally acknowledge, do, jointly and severally, covenant and agree, to and with the said party of the second part, to extend, and by these presents do extend, the time of payment upon all debts, dues, and demands, of every name and nature, now due and to become due, to them, or either of them, from the said firms of William Tyack & Co., and Stewart Newell & Co., or either of them, for and during the full end and term of sixty days from the date hereof. And that the said parties of the first part will not, nor will either of them, institute any suit, or other proceedings of any kind, to enforce or secure the payment of said debts, claims, or demands, or either of them, or any part thereof, now due or to become due to them, or either of them as aforesaid, until after the full expiration of said term of sixty days. But this extension shall not be held or construed to deprive the creditors of the right and power to take any and all proceedings in Texas, by suit or otherwise, to recover or secure their debts and demands, or any or either of them, with like effect as they might do if this extension had not been granted, in the event of the said Warren ascertaining, on his arrival in Texas, that such suits or proceedings are necessary to protect and preserve the rights and interests of the said William Tyack, and his said creditors, on account of the bad faith of Stewart Newell.

In witness whereof the parties hereto have hereunto set their hands and seals, the day and year first above written.

HAGERTY, DRAPER & SONS, [L. S.]
EGGLESTON & BATTELL, [L. S.]
LEE & BREWSTER, [L. S.]
AUSTIN & SPICER, [L. S.]
TROBRIDGE, DWIGHT & CO., [L. S.]
C. J. RICHARDS, [L. S.]
CHS. CARTLIDGE, [L. S.]
N. Y. & SAUGERTIES WHITE LEAD CO., [L. S.]
JOB, CHANDLER & FOSTER, [L. S.]
JAUDONS & MASON, [L. S.]
JOHN GOULD, [L. S.]
CASWELL, HEIGHT & CO., [L. S.]
SPICER & RIPLEY, [L. S.]
DOREMUS & NIXON. [L. S.]

By S. DRAPER, Jr.,
By U. B. BREWSTER, and
CHARLES B. SPICER,
Their attorneys.

Sealed and delivered in presence of—
AUG. F. SMITH.

And afterwards, on the 21st day of August, A. D. 1849, Messrs. Sherwood, Wagner & Merriman, solicitors for complainants, filed their petition for an appeal in this cause, in words and figures following, to wit:

UNITED STATES DISTRICT COURT,
District of Texas.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss. } In equity.

And now, at this day, that is to say, on this 14th day of August, A. D. 1849, come the complainants, William Tyack and Lindley Murray, by Frank H. Merriman, Lorenzo Sherwood, and Handl. W. Wagner, their solicitors, and pray for an appeal to the Supreme Court of the United States, from the decree of this honorable court dismissing the bill of complaint in this cause, and ask this court to enter an appeal accordingly.

F. H. MERRIMAN,
LORENZO SHERWOOD,
HANDL. W. WAGNER,
Solicitors, and of counsel for complainants.

And afterwards, to wit, on the 22d day of August, A. D. 1849, Lorenzo Sherwood, one of the solicitors for complainants, filed his affidavit, in the words and figures following, to wit:

UNITED STATES DISTRICT COURT,
District of Texas.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss. } In equity.

Lorenzo Sherwood, one of the solicitors, and of counsel for complainants in the above entitled cause, being duly sworn, says, he received the affidavits of William E. Warren and U. B. Brewster, filed by him in this cause, by the mail arriving from New Orleans to Galveston, this morning; that he filed the same soon after the opening of the court this day, and that he could not sooner procure the said affidavits, after the motion made by Messrs. Allen & Hale to dismiss this suit.

LORENZO SHERWOOD.

Sworn and subscribed, this 22d day of August, 1849, before me,
A. M. HUGHES, *Com'r.*

And afterwards, to wit, on the 22d day of August, A. D. 1849, the complainants, by their counsel, Merriman, Sherwood & Wagner, filed the following motion, in the words and figures as follows, to wit:

UNITED STATES DISTRICT COURT,
District of Texas.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss. } In equity.

And now, at this day, that is to say, on the 22d day of August, A. D. 1849, come the complainants, William Tyack and Lindley Murray, by Merriman, Sherwood & Wagner, their solicitors, and move the court to open the decree dismissing the bill of complaint in this cause, and to vacate said decree and to reinstate said cause; which motion will be founded on the records and proceedings on file in said cause, and also upon the additional affidavits of U. B. Brewster and William E. Warren, not on file at the time of the motion to dismiss said bill.

And the parties aforesaid pray that the said decree may be opened.

MERRIMAN, SHERWOOD & WAGNER,
Sols. and of counsel for complainants.

And afterwards, on the same day, to wit, on the 22d day of August, A. D. 1849, the complainants, by their counsel, Merriman, Sherwood & Wagner, filed a notice of application to the Supreme Court for a mandamus in this cause, which notice is in the words and figures following, to wit:

UNITED STATES DISTRICT COURT,
District of Texas.

WILLIAM TYACK and Lindley Murray,
complainants and appellants,
vs.
STEWART NEWELL and Stephen W. Doss,
defendants and respondents. } In equity.

And now, at this day, that is to say, on the 22d day of August, A. D. 1849, at this same term of the court at which the decree was entered dismissing the bill of complainant in this cause, come the complainants, appellants in the above entitled cause, by Merriman, Sherwood & Wagner, their solicitors, and give notice that the honorable the Supreme Court of the United States will be moved, on the first motion day of the next term of the said Supreme Court, to be held at the Capitol, in the city of Washington, for a writ of mandamus, to be directed to the honorable the district court of the United States for the State of Texas, commanding the said district court forthwith to send up the appeal taken in this cause to the said Supreme Court, together with a certified transcript of the whole record and proceedings therein had before the said district court, may further cause to be done in this cause on said appeal what of right ought to be done; which said motion will be founded on a certified transcript of the record and proceedings in said cause or a sworn copy thereof, or so much as may

be necessary to show cause why the said motion should be granted; and also the said motion will be founded in part on other papers and affidavits hereafter to be served on the solicitors of the defendants in due season to be read on said motion. And further, that the said Supreme Court will be moved for a rule or order that the defendants or respondents, Stewart Newell and Stephen W. Doss, be ordered to pay the costs and expenses of bringing up the said motion for a mandamus, and for such other and further rule or order as the said Supreme Court may deem proper to grant in the premises.

And the said complainants, appellants, pray for an order of the honorable the district court, staying proceedings in the court below until the said motion for a mandamus can be heard, or until the further order of the said Supreme Court thereon.

F. H. MERRIMAN,
LORENZO SHERWOOD, and
H. W. WAGNER,
Sols. and of counsel for complainants, appellants.

To O. F. JOHNSON, John B. Jones,
A. P. Thompson, and J. A. Swett,
Sols. and of counsel for defendants, Newell & Doss.

And afterwards, to wit, on the said 22d day of August, A. D. 1849, the following order was entered upon the minutes of this court by direction of the court, to wit:

TYACK & MURRAY
vs.
NEWELL & DOSS.

On motion of F. H. Merriman, Lorenzo Sherwood, and H. W. Wagner, assuming to act as counsel for complainants, and as counsel for the creditors named in the bill of complaint, it is ordered that it be entered on the minutes of the court that they, as counsel aforesaid, offer to execute and file any bond that may be required by the court, and that may be considered proper and in due legal form. It is further ordered that it be entered that defendants objected at the time to the entry and that no bond was tendered.

And afterwards, on the 23d day of August, A. D. 1849, Ebenezer Allen and William G. Hale filed the following motion, to wit:

U. S. DISTRICT COURT,
District of Texas.

WM. TYACK AND LINDLEY MURRAY
vs.
STEWART NEWELL AND STEPHEN W. DOSS. } In equity.

And now came the said complainants, Wm. Tyack and Lindley Murray, by Ebenezer Allen and Wm. G. Hale, their counsel and solicitors, and referring to the special instructions to them on file in this

cause, and to the revocation of the power of attorney to Wm. E. Warren under which these solicitors act, and to the other documents connected with the premises on file in this cause, countermand the pretended notice this day given by F. H. Merriman, Lorenzo Sherwood, and Handl. W. Wagner, in the name of said complainants; that the honorable Supreme Court of the United States, at the next term thereof, will be moved for a writ of mandamus, directing the district court aforesaid to send up the appeal taken in this cause, etc. And the said complainants further protest, that no appeal has been taken, as the said pretended notice alleges; and further, that they desire no appeal to be taken in this cause; and further, that they have not, nor do in any manner whatever authorize the said Merriman, Sherwood, and Wagner, or either of them, or any other person, to apply for or take any appeal in this cause; and they deny the authority of said Merriman, Sherwood, and Wagner to appear or act in this behalf, or for any other purpose, for or in the name of the said complainants.

ALLEN & HALE,
Solicitors and counsel for complainants.

And afterwards, to wit, on the 24th day of August, A. D. 1849, the following orders were entered upon the minutes by order of the court, that is to say:

TYACK & MURRAY
vs.
NEWELL & DOSS.

On this day the motion of F. H. Merriman, Lorenzo Sherwood, and H. W. Wagner, assuming to act as solicitors for complainants, and as solicitors for the creditors of Stewart Newell & Co., who are named in the bill of complaint, came on to be heard; after argument of counsel, the court being advised, it is ordered that the motion be overruled.

SAME
vs.
SAME.

On this day came on to be heard the motion filed on the ninth August, (inst.) by Ovid *Ovid* F. Johnson and A. P. Thompson, solicitors for Stephen W. Doss, one of the defendants, praying the court to order the restoration of all goods, wares, and merchandise, and other property taken from the possession of the said defendant Doss, by virtue of the process issuing from this court, and now in the possession of this court's receiver, N. B. Yard, and that the said receiver pay over to him, the said Doss, all moneys, securities, or other effects in his hands or possession, by virtue of proceedings had herein; and that the said receiver forthwith make report to this court of all his acts and proceedings in this cause, and make return of all the property and effects received by him, what portion of the same has been sold, the sum of money in his hands, what amount due by note, bond, &c., the amount of ex-

penditure had on account of said property, or otherwise arising in this suit. The argument of counsel having been heard, and the court being now sufficiently advised, it is ordered that the motion be sustained.

And that N. B. Yard, the receiver aforesaid, pay over to the defendant, Stephen W. Doss, or his solicitors or agents, the effects in his hand, and make his report to this court of all his acts and doings herein as required by the terms of the motion aforesaid.

And afterwards, on the same day, to wit, on the 24th day of August, A. D. 1849, the motion of Messrs. Allen & Hale, filed on the 21st day of August, came to be heard; whereupon the court made the following order, to wit:

TYACK & MURRAY
vs.
NEWELL & DOSS.

On this day came on for hearing the motion of Messrs. Allen & Hale, solicitors for complainants, Tyack & Murray, filed on the 21st day of August, instant, praying the court to strike from the files of this court papers filed on the 21st instant, as of the 14th instant, purporting to be an application for appeal from the final decree of the court in this cause to the Supreme Court of the United States, together with the bonds filed, purporting to be bonds for appeal.

After argument of counsel heard, and the court being now sufficiently advised, it is ordered that the said appeal be disallowed, and the bonds offered as appeal bonds are disapproved by the court.

And afterwards, on the 12th day of August, A. D. 1848, Messrs. Merriman, Sherwood and Wagner, of counsel for complainants, offered the following bond, to be filed as an appeal bond in this cause, to wit:

Know all men by these presents, that we, Henry Hubbell and Michael Seiligson, merchants, of the city of Galveston, in the State of Texas, are held and firmly bound unto Stewart Newell and Stephen W. Doss, in the penal sum of six thousand dollars, to be paid to the said Stewart Newell and Stephen W. Doss, their heirs, executors, administrators, or assigns; and for which payment, well and truly to be made, we bind ourselves, and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 24th day of August, A. D. 1849.

Whereas in a suit, in the district court of the United States, for the district of Texas, (in equity,) in which William Tyack and Lindley Murray are complainants, and Stewart Newell and Stephen W. Doss are defendants, a final decree has been entered, dismissing the bill of complaint in said cause, and an order or decree entered therein, directing the property in controversy, in the hands of the receiver, to be delivered over to Stephen W. Doss, one of the defendants in said cause. And whereas a petition of appeal has been filed by complainants in said cause, as appears by the records and proceedings in said court:

Now, therefore, the condition of this obligation is such, that if the

said complainants shall prosecute their said appeal to effect and without delay, and shall answer all damages and costs in case the said appeal shall be dismissed, or in case they fail to make their plea or their said appeal good, then the above obligation to be void; otherwise to remain in full force and virtue.

HENRY HUBBELL, [SEAL.]
M. SEILIGSON. [SEAL.]

I certify that the within bond was acknowledged before me, this 24th day of August, 1849, and that the same was offered as an appeal bond in this cause. I approve the goodness and sufficiency of the sureties.

JOHN C. WATROUS.

UNITED STATES OF AMERICA,
District of Texas.

Personally came and appeared before me, John C. Watrous, judge of the United States district court, for the district of *of* Texas, Henry Hubbell and Michael Seiligson, merchants, of the city of Galveston, and obligors of the within bond, and being by me severally sworn, do severally depose and say:

And, first, the said Henry Hubbell deposes and says, that he is a freeholder and resident in the city of Galveston aforesaid, and that he is worth the sum of six thousand dollars, over and above all debts and liabilities by him owing or incurred. And the said Michael Seiligson deposes and says, that he is a freeholder, and resident in the city of Galveston aforesaid, and that [he] is worth the sum of six thousand dollars, over and above all debts and liabilities by him owing or incurred.

HENRY HUBBELL,
MICHAEL SEILIGSON.

Sworn and subscribed before me, this 24th day of August, A. D. 1849.

JOHN C. WATROUS,
Judge, United States district court,
for the district of Texas.

The within bond is executed and offered to be filed, and tendered to supply any defects in the former appeal bonds in this cause, and as additional security, and also as security in the last appeal, attempted to be taken or made on the part and in the name of the complainants, William Tyack and Lindley Murray, by their solicitors, Merriman, Sherwood and Wagner.

MERRIMAN, SHERWOOD & WAGNER,
Of counsel for complainants and appellants.

Dated August 24, 1849.

And afterwards, on the same day, to wit, on the 24th day of August, A. D. 1849, the following order was entered upon the minutes by order of the court, to wit:

TYACK AND MURRAY
vs.
NEWELL AND DOSS.

On this day came on for hearing the following motion, in words and figures as follows, to wit: "And now, at this day, that is to say, on the 22d day of August, A. D. 1849, at this same term of the court at which the decree was entered dismissing the bill of *of* complaint in this cause, came the complainants, appellants in the above entitled cause, by Merriman, Sherwood and Wagner, their solicitors, and give notice, that the honorable Supreme Court of the United States will be moved, on the first motion day of the next term of the said Supreme Court, to be held at the Capitol, in the city of Washington, for a writ of mandamus, to be directed to the honorable district court of the United States for the State of Texas, commanding the said district court forthwith to send up the appeal taken in this cause to the said Supreme Court, together with a certified transcript of the whole record and proceedings therein, had before the said district court; that the Supreme Court may further cause to be done in this cause, on said appeal, what of right ought to be done. Which said motion will be founded on a complete transcript of the record and proceedings in this cause, or a sworn copy thereof, or so much as may be necessary to show cause why the said motion should be granted; and, also, the said motion will be founded, in part, on other papers and affidavits, hereafter to be served on the solicitors of the defendants in due season, to be read on said motion; and further, that the said Supreme Court will be moved for a rule or order, that the defendant and respondent, Stewart Newall and Stephen W. Doss, be ordered to pay the costs and expenses of bringing up said motion for a mandamus, and for such other and further rule or order as the said Supreme Court may deem proper to grant in the premises.

"And said complainants, appellants, pray for an order of the hon. district court staying proceedings in the court below until some motion for a mandamus can be heard, or until the further order of the said Supreme Court thereon.

"F. H. MERRIMAN,
"LORENZO SHERWOOD,
"H. W. WAGNER,
"*Sol'rs and counsel for complainants and appellants.*

"To O. F. JOHNSON,
"JOHN B. JONES,
"A. P. THOMPSON, and
"J. A. SWETT.
"*Solicitors and counsel for defts., Newell and Doss.*"

And upon motion of solicitors for complainants, it is ordered that they have leave to withdraw this motion; which was accordingly done.

And afterwards, to wit, on the 24th day of August, A. D. 1849, the

motion of Messrs. Merriman, Sherwood, and Wagner, praying the court to open the decree dismissing this cause, filed on the 22d August, inst., came on to be heard; whereupon the court made the following order, to wit:

TYACK and Murray
vs.
STEWART NEWELL.

On this day, the motion of Messrs. Sherwood, Merriman, and Wagner, solicitors and counsel for complainants, praying the court to open the decree dismissing the bill of complaint, and vacate the said decree, and reinstate said cause, filed on the 22d August, inst., came on to be heard; after argument heard, and the court being sufficiently advised, it is ordered that the motion be overruled.

And afterwards, to wit, on the same day, August 24th, 1849, came on to be heard the motion of Stephen W. Doss, filed on the 9th day of August, inst., praying a restitution of the goods in controversy, came on to be heard; whereupon the court made the following order, that is to say:

TYACK and Murray
vs.
NEWELL and Doss. } In chancery.

Upon motion of the said Stephen W. Doss, one of the defendants to the above entitled cause, filed on the 9th day of August, 1849, it is hereby ordered, that N. B. Yard, the receiver in this cause, do forthwith deliver to the said Doss all the goods, wares, and property taken out of his possession and that of his agents, by virtue of the proceedings in this cause; and that the said receiver do forthwith pay over to him, the said Doss, all moneys received on account of the sales of any of the said property, and all bonds, notes, and evidences of debt, taken in part payment or security thereof for such sales; and it is further ordered, that the said receiver do forthwith make a full report of all his acts and proceedings in this cause, together with a full statement of all the property received by him, the portion sold, the cash, notes, bonds, &c., on hand, and the expenditures made or discharged on account of the said property, or otherwise arising in this suit.

The following order, in words and figures as follows, was this day, (Aug. 24th, 1849,) filed and presented to the court:

WILLIAM TYACK AND LINDLEY MURRAY,
complainants and appellants,
vs.
STEWART NEWELL AND STEPHEN W. DOSS,
defendants and respondents. } In equity.

The appeal in the above entitled cause having been disallowed by the court, and the solicitors of the complainants, F. H. Merriman, Lorenzo Sherwood, and Handl. W. Wagner, having entered a notice

of motion to be made on the first motion day of the next term of the Supreme Court, for a writ of mandamus to bring up the appeal attempted to be made in this cause, and for other and further relief; it is ordered that all further proceedings in the district court, or under the order or decrees of the said district court, be stayed until the first motion day of the said Supreme Court, and until the further order of the Supreme Court upon the said motion, except that the receiver appointed in this cause is at liberty to collect, safe-keep, and take care of the funds, property, and effects during the pendency of said motion, the same as though no decree dismissing the bill of complaint had been made.

And now, upon the presentation to the court of the above order, the following is ordered to be entered as the endorsement of the judge on the minutes of the court:

"I refuse to grant this prayer, upon the ground that it claims to be made by the solicitors of the complainants, when the fact is, as shown by the record, that they have been displaced by the complainants, and upon the further ground, that I have no power to make the order prayed for, having no longer control of a cause which has been by a decree of this court dismissed."

And afterwards, on the same day, that is to say, on the twenty-fourth day of August, A. D. 1849, Messrs. Merriman, Sherwood and Wagner filed their application for an appeal in this cause, which, by order of the court was entered upon the minutes thereof as follows, to wit:

On this *this* day, the following motion was filed and ordered to be entered on the minutes:

"And now, at this day, that is to say, on the 24th day of August, A. D. 1849, came the complainants, William Tyack and Lindley Murray, by their solicitors, Frank H. Merriman, Lorenzo Sherwood, and Handl. W. Wagner, and pray for an appeal to the Supreme Court of the United States, as well from the decree dismissing the bill of complaint in the above cause, as from the order or decree directing the property in the hands of the receiver, the property in controversy in this cause, to be delivered over to Stephen W. Doss, one of the above named defendants, and pray the court to enter the appeal accordingly." The court being advised, it is ordered that the motion be overruled and the appeal disallowed, because the said cause has been dismissed by a former order of this court, upon the application of complainants, by their solicitors, Eben. Allen and Wm. G. Hale.

And afterwards, on the same day, that is to say, on the 24th day of August, A. D. 1849, Messrs. Sherwood, Wagner & Merriman filed in this cause a notice of application for a mandamus, &c.; which notice is in words and figures following, to wit:

UNITED STATES DISTRICT COURT,
District of Texas.

WILLIAM TYACK and Lindley Murray, complainants and appellants,
vs.
STEWART NEWELL and Stephen W. Doss, defendants and respondents.
} In equity.

And now, at this day, that is to say, on the 24th day of August, A. D. 1849, come the said complainants and appellants, by their solicitors, F. H. Merriman, Lorenzo Sherwood, and Handl. W. Wagner, and in open court give notice, that the honorable the Supreme Court of the United States will be moved, at the first motion day of the next term thereof, to be held at the Capitol, in the city of Washington, for a writ of mandamus, directing the district court aforesaid to send up the appeal taken in this cause, together with a transcript of the record and proceedings therein in the district court, or to allow the said appeal prayed for in this cause, or for such other and further relief as may seem proper to the court in the premises; and which motion will also be connected with an application to the said court to docket the above entitled cause on appeal, upon filing in the said Supreme Court a transcript of the record; and which said motion will be founded on a transcript of the record and proceedings in this cause, had in the district court, or sworn copies thereof, or so much or such parts as may be necessary to sustain the said motion; and, also, the said motion will be founded, in part, on other papers and affidavits, to be served on the defendants' solicitors in due time to be read on said motion.

F. H. MERRIMAN,
LORENZO SHERWOOD,
And HANDL. W. WAGNER,
Solicitors and of counsel for complainants, &c.

To OVID F. JOHNSON,
JOSEPH A. SWETT,
JOHN B. JONES, and
A. P. THOMPSON, esqrs.,
Solicitors and of counsel for defendants.

And afterwards, on the same day, to wit, on the 24th day of August, A. D. 1849, on motion of Messrs. Allen and Hale, solicitors and counsel for complainants, the following paper was ordered to be entered on the minutes of the court, to wit:

And now come the said complainants, Wm. Tyack and Lindley Murray, by Ebenezer Allen and William G. Hale, their counsel and solicitors, and referring to the special instructions to them on file in this cause, and to the revocation of the power of attorney to William E. Warren, under which these solicitors act, and to the other documents connected with the premises on file in this cause, countermand the pretended notice this day given by F. H. Merriman, Lorenzo Sherwood,

and Handl. W. Wagner, in the name of the said complainants, that the honorable Supreme Court, at the next term thereof, will be moved for a writ of mandamus, directing the district court aforesaid to send up the appeal taken in this cause, etc. And the said complainants further protest, that no appeal has been taken, as the said pretended notice alleges; and further, that they desire no appeal to be taken in this cause; and further, that they have not, nor do in any manner whatever, authorize the said Merriman, Sherwood, and Wagner, or either of them, or any other person, to apply for or take any appeal in this cause; and they deny the authority of the said Merriman, Sherwood, and Wagner to appear and act in this behalf, or for any other purpose, for or in the name of them, the said complainants

And afterwards, on the 27th day of August, A. D. 1849, on motion of Stephen W. Doss, by his counsel, made in open court, the following order was made by the court, in words and figures as follows, to wit:

TYACK and Murray
vs.
NEWELL and Doss.

On motion of counsel for Stephen W. Doss, one of the defendants in this cause, it is ordered that James Love, one of the masters in this court, do proceed as speedily as practicable to cause witnesses to come before him, and ascertain what property, goods, effects, and money have come into the hands of N. B. Yard, the receiver in this cause; from whose hands and possession the same was taken; what portion of the same is still in the possession of the receiver; what portion has been sold or disposed of; for what amount; whether the same has been paid for in cash or notes, or in what manner; whether the said money or notes are now in the hands and possession of said receiver, or in whose possession the same are, or any portion thereof, and the amounts respectively.

And afterwards, on the 28th day of August, James Love, one of the masters in this court, to whom the order of court made on yesterday was directed, submitted his report in words and figures as follows, to wit:

TYACK and Murray
vs.
NEWELL and Doss. } In chancery.

On this day, in obedience to an order of court, referring to me, as master in chancery, to ascertain and report "what property, goods, effects, and money have come into the hands of N. B. Yard, the receiver in this case, from whose hands and possession the same was taken, what portion of the same is still in the possession of the receiver, what portion has been sold or disposed of, for what amount, whether the same has been paid for in cash or notes, or in what manner, whether the said money or notes are now in the hands and possession of said receiver, or in whose possession the same are:"

I beg leave to report, that in pursuance to notice given to the coun-

sel of Stephen W. Doss, I caused the said party, by his counsel, to appear before me in the court room at four o'clock, and after hearing all the evidence introduced, beg leave to report, that the goods were taken possession of by the receiver, the largest portion of them on board the sloop Alamo, then in the Brazos river, the residue in the storehouse of Newell & Co., in Galveston. They were taken from the possession of Stephen W. Doss. The goods that came into the possession of the receiver (with the exception hereafter noted) were sold at auction in the city of Galveston, on the 6th and 7th November, 1848, the greater portion at six months' time. The gross amount of sales, $8,692, nett amount $8,235 09. It appears that the receiver has deposited in the Com. and Agricultural Bank the sum of $5,200. There has been paid, and is now in the hands of Jacob L. Briggs, the partner in trade of Yard, (who is absent,) the sum of $100. There is also in the possession of Briggs, left with him for collection by Yard, the receiver, two notes, upon which a balance is due; one executed by H. A. Cobb, Henry de St. Cyr, and S. W. Dake, dated November 13, 1848; and one six months after date for $689 92, payable to N. B. Yard or order, a credit endorsed for $392. The other note, dated 7th November, 1848, and due six months after date, payable to N. B. Yard or order, executed by Lawrence Frosh, Henry de St. Cyr, for $1,567 24, credit endorsed 7th July, 1849, $500; July 14th, $50; 21st July, $50; 27th July, $50. Appended to these notes is a power of attorney executed by the parties for a confessing of judgment. There is also in the possession of Brigg, in their store, a few pieces of cotton goods not disposed of.

I further report, that all the amount for which the goods sold has been paid for with the exception of the two notes as above stated. That there is no evidence to show where the residue of the money (not on deposit and in Brigg's possession) is, the receiver being gone north, and not expected to return until 15th or 20th September.

All which is respectfully submitted.

JAMES LOVE, *Master.*

August 28th, 1849.

And afterwards, on the same day, to wit, on the 28th day of August, A. D. 1849, the master's report upon the matters contained in the order of reference of the 27th inst., was read; whereupon the court made the following order, to wit:

TYACK and Murray
vs.
NEWELL and Doss.

The report of James Love, the master to whom the motion filed on yesterday was referred, was filed on this day, which, being read, it is ordered that it be approved.

Afterwards, on the same day, that is to say, on the 28th day of Au-

gust, A. D. 1849, Stephen W. Doss, one of the defendants in this cause, filed the following motion, in words and figures following, that is to say:

TYACK and Murray
vs.
STEPHEN W. Doss. } Sur-report of master in this case.

On motion of the counsel of S. W. Doss, the court is directed to ask the master to cause a notice to be served on N. B. Yard, receiver in this case, personally, or if he is absent, then to be left at his place of residence, or place of business, in the city of Galveston, with an adult white person belonging to his family, or any agent at his place of business; that unless he complies with the order of the court made on the twenty-third day of August inst., to pay over to said Doss the money in his hands or possession, and deliver to him the property, notes, bonds, and effects, in his hands, as receiver in this case, and render his accounts as receiver within four days from the service of said notice, then that an order of attachment shall be entered against him.

O. F. JOHNSON,
J. B. JONES,
A. P. THOMPSON,
Solicitors for Doss.

August 28th, 1849.

And afterwards, on the same day, to wit, the 28th day of August, A. D. 1849, upon the hearing of the motion of Doss, one of the defendants in this cause, asking the court to direct the master to serve a notice upon N. B. Yard, &c., the court made the following order, to wit:

SAME
vs.
SAME.

On motion of the counsel for Stephen W. Doss, one of the defendants in this cause, it is ordered that James Love, one of the masters, cause a notice to be served on N. B. Yard, the receiver in this cause, personally, or if he be absent, to cause notice to be left at his place of residence, or place of business, in the city of Galveston, with some adult white person belonging to his family, or at his usual place of business, that unless he complies with the order of court, made on the twenty-third day of August inst., to pay over to said Doss the money in his hands as receiver, and deliver to him the property, notes, bonds, and effects, in his hands as receiver in this case, and that he make report of all his acts and doings, as receiver aforesaid, within thirty days from the service of said notice.

And afterwards, on the same day, to wit, on the 28th day of August, A. D. 1849, upon motion of Stephen W. Doss, one of the defendants in this cause, by his counsel, in open court, the court made the following order, that is to say:

SAME
vs.
SAME.

Upon coming in of the master's report, upon motion of Stephen W. Doss, by his solicitors, Johnson and Jones, it is ordered that the Commercial and Agricultural Bank, in which it appears by the said report, the sum of five thousand two hundred dollars has been deposited by the receiver, N. B. Yard, and now remains on deposit, the same being a portion of the money directed by the order of the court in this cause, to be paid over to the said Stephen W. Doss, be, and the said Commercial Bank is hereby enjoined, restrained, and prohibited from paying over the said sum, so deposited as aforesaid, or any part thereof, to any other person than the said Stephen W. Doss, in pursuance of an order of this court made on the 23d of August, instant. And it is also further ordered upon a like motion, in behalf of the said Doss, as it appears by the report of the master, that Jacob L. Briggs has in his possession the sum of one hundred dollars, being a portion of the said money, so ordered to be paid over to the said Doss; and also two notes, one executed by H. A. Cobb, Henry De St. Cyr, and L. W. Dake, dated 13th November, 1848, for six hundred and eighty-nine dollars $\frac{9}{100}$, payable to N. B. Yard, on which is endorsed a credit of $392; the other executed by Lawrence Frosh, H. A. Cobb, and Henry De St. Cyr, dated 7th day of November, 1848, for $1,567\frac{24}{100}$, payable to said Yard, with sundry credits endorsed thereon, amounting to $650, and also some pieces of cotton goods placed in the possession of said Yard as receiver, be and the said Briggs is hereby enjoined and prohibited from paying over the said money or delivering the said notes or goods to any other person than the said Stephen W. Doss, in pursuance of the aforesaid order of this court, made on the 23d day of August instant. And that the said Commercial and Agricultural Bank and the said Briggs shall respectively hold the said money, notes, and goods in their possession, until otherwise ordered by the court; and each of them, however, at liberty to pay over the same in pursuance of the aforesaid order of the 23d of August.

It is further ordered, that a copy of this order be served on the said Commercial and Agricultural Bank, and on the said Briggs, and that return of such service be made to this court.

It is ordered, that a notice be left at the place of residence, or the usual place of business of N. B. Yard, the receiver in this cause, that within thirty days from this day he [may] comply with the order of this court, made on the 23d day of August, 1849, to pay over the money, goods, and effects in his hands as receiver; and also make his report as required by said order.

And afterwards, that is to say, on the 28th day of August, A. D. 1849, F. H. Merriman, Lorenzo Sherwood, and Handl. W. Wagner, filed their motion as counsel for William Tyack and Lindley Murray, complainants in this cause, asking the court to vacate and annul the

decree dismissing this cause, as well as all subsequent orders made therein; which motion is in words and figures as follows, to wit:

UNITED STATES DISTRICT COURT,
District of Texas.

WILLIAM TYACK & Lindley Murray
vs.
STEWART NEWELL & Stephen W. Doss. } In equity.

And now, at this day, that is to say, on the 28th day of August, A. D. 1849, at this same term of the court at which the decree was granted and entered dismissing the bill of complaint in this cause, come the said complainants, William Tyack and Lindley Murray, by F. H. Merriman, Lorenzo Sherwood, and Handl. W. Wagner, their solicitors; and on filing the petitions, statements, and affidavits of Lindley Murray, one of the complainants in the above cause, and other papers, and move this honorable court to open and vacate the decree dismissing the bill of complaint in this cause, and all other orders and decrees subsequently entered therein, and to annul the same.

And this honorable court is further moved to extend the time to take testimony and depositions in this cause until the first day of November next, and for such other and further relief in the premises as may be agreeable to equity; which motion will be founded on the records and proceedings in this cause on file, and the papers herewith filed, and other papers and affidavits to be filed in season to be read on this motion.

F. H. MERRIMAN,
LORENZO SHERWOOD, &
HANDL. W. WAGNER,
Solicitors, and of counsel for complainants.

And afterwards, on the same day, F. H. Merriman, Lorenzo Sherwood, and Handl. W. Wagner, as solicitors for complainants, filed the following petition, in words and figures as follows, to wit:

UNITED STATES DISTRICT COURT,
District of Texas.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss. } In equity.

And the said complainants, William Tyack and Lindley Murray, complainants in the above cause, on this 28th day of August, A. D. 1849, in this same term in which the decree dismissing the bill in this cause was made, and by their solicitors, F. H. Merriman, Lorenzo Sherwood, and Handl. W. Wagner, pray this honorable court to open the decree in this cause, and to vacate the same, and all subsequent decrees and orders made in the said cause, and upon the grounds, amongst others, that new matter is herewith filed, and upon in connexion with

SAME
vs.
SAME.

Upon coming in of the master's report, upon motion of Stephen W. Doss, by his solicitors, Johnson and Jones, it is ordered that the Commercial and Agricultural Bank, in which it appears by the said report, the sum of five thousand two hundred dollars has been deposited by the receiver, N. B. Yard, and now remains on deposit, the same being a portion of the money directed by the order of the court in this cause, to be paid over to the said Stephen W. Doss, be, and the said Commercial Bank is hereby enjoined, restrained, and prohibited from paying over the said sum, so deposited as aforesaid, or any part thereof, to any other person than the said Stephen W. Doss, in pursuance of an order of this court made on the 23d of August, instant. And it is also further ordered upon a like motion, in behalf of the said Doss, as it appears by the report of the master, that Jacob L. Briggs has in his possession the sum of one hundred dollars, being a portion of the said money, so ordered to be paid over to the said Doss; and also two notes, one executed by H. A. Cobb, Henry De St. Cyr, and L. W. Dake, dated 13th November, 1848, for six hundred and eighty-nine dollars $\frac{92}{100}$, payable to N. B. Yard, on which is endorsed a credit of $392; the other executed by Lawrence Frosh, H. A. Cobb, and Henry De St. Cyr, dated 7th day of November, 1848, for $1,567\frac{24}{100}$, payable to said Yard, with sundry credits endorsed thereon, amounting to $650, and also some pieces of cotton goods placed in the possession of said Yard as receiver, be and the said Briggs is hereby enjoined and prohibited from paying over the said money or delivering the said notes or goods to any other person than the said Stephen W. Doss, in pursuance of the aforesaid order of this court, made on the 23d day of August instant. And that the said Commercial and Agricultural Bank and the said Briggs shall respectively hold the said money, notes, and goods in their possession, until otherwise ordered by the court; and each of them, however, at liberty to pay over the same in pursuance of the aforesaid order of the 23d of August.

It is further ordered, that a copy of this order be served on the said Commercial and Agricultural Bank, and on the said Briggs, and that return of such service be made to this court.

It is ordered, that a notice be left at the place of residence, or the usual place of business of N. B. Yard, the receiver in this cause, that within thirty days from this day he [may] comply with the order of this court, made on the 23d day of August, 1849, to pay over the money, goods, and effects in his hands as receiver; and also make his report as required by said order.

And afterwards, that is to say, on the 28th day of August, A. D. 1849, F. H. Merriman, Lorenzo Sherwood, and Handl. W. Wagner, filed their motion as counsel for William Tyack and Lindley Murray, complainants in this cause, asking the court to vacate and annul the

decree dismissing this cause, as well as all subsequent orders made therein; which motion is in words and figures as follows, to wit:

UNITED STATES DISTRICT COURT,
District of Texas.

WILLIAM TYACK & Lindley Murray
vs.
STEWART NEWELL & Stephen W. Doss. } In equity.

And now, at this day, that is to say, on the 28th day of August, A. D. 1849, at this same term of the court at which the decree was granted and entered dismissing the bill of complaint in this cause, come the said complainants, William Tyack and Lindley Murray, by F. H. Merriman, Lorenzo Sherwood, and Handl. W. Wagner, their solicitors; and on filing the petitions, statements, and affidavits of Lindley Murray, one of the complainants in the above cause, and other papers, and move this honorable court to open and vacate the decree dismissing the bill of complaint in this cause, and all other orders and decrees subsequently entered therein, and to annul the same.

And this honorable court is further moved to extend the time to take testimony and depositions in this cause until the first day of November next, and for such other and further relief in the premises as may be agreeable to equity; which motion will be founded on the records and proceedings in this cause on file, and the papers herewith filed, and other papers and affidavits to be filed in season to be read on this motion.

F. H. MERRIMAN,
LORENZO SHERWOOD, &
HANDL. W. WAGNER,
Solicitors, and of counsel for complainants.

And afterwards, on the same day, F. H. Merriman, Lorenzo Sherwood, and Handl. W. Wagner, as solicitors for complainants, filed the following petition, in words and figures as follows, to wit:

UNITED STATES DISTRICT COURT,
District of Texas.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss. } In equity.

And the said complainants, William Tyack and Lindley Murray, complainants in the above cause, on this 28th day of August, A. D. 1849, in this same term in which the decree dismissing the bill in this cause was made, and by their solicitors, F. H. Merriman, Lorenzo Sherwood, and Handl. W. Wagner, pray this honorable court to open the decree in this cause, and to vacate the same, and all subsequent decrees and orders made in the said cause, and upon the grounds, amongst others, that new matter is herewith filed, and upon in connexion with

the records and proceedings in the said cause heretofore had and made; your petitioners believe that equity and justice requires that the said decree, dismissing the said bill of complaint, should be opened; and your petitioners, &c.

F. H. MERRIMAN,
HANDL. W. WAGNER, &
LORENZO SHERWOOD,
Solicitors and of counsel for complainants.

Afterwards, to wit, on the 28th day of August, A. D. 1849, the complainants, by their attorneys, filed the following affidavit and statement of Lindley Murray, to wit:

THE UNITED STATES DISTRICT COURT,
District of Texas.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss. } In equity.

Personally appeared before me, this 27th day of August, A. D. 1849, Frank H. Merriman and Lorenzo Sherwood, and being by me duly sworn, severally depose and say, that they believe the annexed petitions and statements of Lindley Murray to be genuine, and to have been made by him in the manner in which they purport to have been made, and that the same were duly subscribed by him and sworn to, as stated in the same; and this deponent, Lorenzo Sherwood, for himself says, he received the same in the mail arriving this morning from New Orleans to Galveston.

LORENZO SHERWOOD,
F. H. MERRIMAN.

Sworn and subscribed before me, this 28th day of August, A. D. 1849.

JAMES LOVE, *Clerk.*

(*Petition and affidavit of Murray.*)

UNITED STATES DISTRICT COURT,
District of Texas.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss.

To the honorable the judge of the United States district court, in and for the district of Texas, the petition of the undersigned, Lindley Murray, one of the complainants in the above entitled cause, showeth:

That heretofore, to wit, on or about the eighth day of July, 1848,

this petitioner was induced by representations made to him by Stewart Newell and others to execute a revocation of the power of attorney executed by this petitioner and the above named William Tyack to William E. Warren, and by virtue of which said Warren caused this suit to be commenced; upon which revocation, together with other papers, a motion or motions have been made, as this petitioner is informed and believes, to this honorable court to dismiss or discontinue this cause.

And this petitioner further showeth to this honorable court, that in consequence of said representations, together with other and further representations from said Newell and others, which this petitioner has since learned were unfounded in fact; this petitioner has since the time of executing the said revocation been induced to make statements which this petitioner has since learned are incorrect, and on which statements it is designed by the defendant's counsel in this cause to procure a dismissal of this suit.

That this petitioner has recently read and heard read copies of papers and proceedings in this cause, and has taken the advice of his own counsel in the same, counsel he has employed in New York, and entirely disinterested in this matter. And he is now fully advised in the matter, and represents to this honorable court that he, this petitioner, has, as he verily believes, been imposed upon by said Newell, and his aiders and abettors, and was induced by said Newell to execute said revocation, and to make said representations herein before mentioned.

Now, therefore, this petitioner hereby revokes and annuls said revocation, and prays this honorable court to declare the same null and void, and prays this honorable court to restore the said suit, if the same shall have been dismissed, and in all things to restore this petitioner to all his rights, and to the standing he had in this court in this cause before the revocation was executed, on which said motion for a discontinuance or dismissal of this suit was founded; and this petitioner further prays, that said suit may be continued, and proceed to final judgment and decree, as well for the benefit of this petitioner and his co-plaintiff or complainant, William Tyack, as for the benefit of the said Tyack & Newell and this petitioner in the bill in this suit mentioned; and that the property in controversy in this suit may be applied according to the prayer of the bill of complaint in this cause, and to the payment of the demands of said creditors.

And this petitioner further prays this honorable court, that the said William Tyack, Stewart Newell, and the defendants' counsel in this cause may be restrained and enjoined by this honorable court from any further proceedings in this cause, to procure a dismissal or discontinuance thereof, if it shall be necessary so to do, till this petitioner can have time to hear from his counsel in Galveston, Texas, and to make to this court a more full and ample representation of the frauds that have been practised on this petitioner. And this petitioner, as in duty bound, will ever pray, &c.

LINDLEY MURRAY.

UNITED STATES OF AMERICA,
State of New York, ss.

Lindley Murray, of the city and county of New York, in the State of New York, being duly sworn, says: That he has read the foregoing petition, and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated on his information and belief; and that as to those matters he believes it to be true.

Subscribed and sworn before me, this 17th day of August, 1849.

W. COXE DUSENBURY,
Commissioner for the State of Texas.

UNITED STATES,
District of Texas.

WILLIAM TYACK & LINDLEY MURRAY
vs.
STEWART NEWELL & STEPHEN W. DOSS.

To the honorable the judge of the United States district court of Texas.

In addition to the matter set forth in the foregoing petition hereto prefixed, the undersigned prays leave further to state and represent, by way of explanation and petition, as follows:

This suit was instituted by an agent, Mr. William E. Warren, appointed as well by the creditors of Stewart, Newell & Co., as by the petitioner and William Tyack. The power of attorney was executed by the undersigned and said Tyack, and is already before the court. It was executed by petitioner and said Tyack for a valuable consideration, namely, an extension by the creditors of the period of payment of the debts owing to them, and an indemnity to us by the creditors against the acts of said agent, and an agreement by them to defray expenses to a certain extent; and the object of the appointment was to close up the co-partnership, and to secure the property, as far as it would go, and have it appropriated to the payment of the creditors. The creditors had, and still have, a direct and beneficial [interest] in this suit, which was commenced as well for their benefit as for the purpose of closing the concerns of said co-partnership, and has been carried on entirely at their expense, and they have procured and indemnified the sureties required in the proceedings, and have employed the counsel in the cause.

I have not, until within a few days past, known the state of the case, or any of the proceedings taken by said agent, except from what representations have been made by Stewart Newell and Peter McGreal to me. The agent corresponded or communicated wholly with the creditors and said Tyack. I have had no communication with either on the subject till within the last few days, from the fact that I had put in no portion of the capital, and that my name did not appear before the

public as a member of the firm. I did not suppose I could be regarded as a member by third persons, and it was not until the time of executing said power of attorney that I was differently advised; but being myself pecuniarily irresponsible, and believing said Tyack & Newell to be responsible, was one particular reason for the little interest I took in the suit or proceedings; and *for* the inattention of the creditors to inform me of the progress of either, I remained in ignorance.

Mr. Newell, subsequent to the proceedings taken by said Warren, informed me of his desire to have the property appropriated to the payment of the debts; deemed the course taken by the agent as ruinous to the creditors' claims, and to the concern, and induced me to believe that the creditors themselves were opposed to the proceedings, and that the controversy was kept alive by the unjust and unscrupulous conduct of the agent, and represented that the alleged sale to Doss would have greatly promoted the interests of the firm and of the creditors.

It was under representations such as these that I was induced, without inquiry, and confiding in the integrity of said Newell, to make the statement in writing recently, which I did at the solicitation of said Newell and McGreal.

I have since conversed with the creditors and with said agent, and have advised with counsel specially employed by me to examine the subject in New York, and am fully satisfied that the representations made by said Newell and McGreal to me are untrue and unfounded, and that I fell into great error in making this statement, and committed a serious wrong in attempting to revoke the said power of attorney, and in authorizing the defendants to take measures to procure a summary dismissal of the suit.

I was wholly ignorant until time said statement was made by me, that the creditors had originally proposed to discharge their debts on receiving the property of the firm then, much less than the amount of the debts, and of their willingness to give said Newell about one thousand dollars besides. I was also ignorant of the negotiations of said agent with said Newell before this suit was brought, or the efforts made by him to prevent litigation, and of the actual proceedings he took, and the responsibility assumed, and the expenses incurred, by the creditors, in this suit; but the facts, as I now learn them to be in truth, were perverted and misrepresented to me.

I desire to make some explanation of the particular matters contained in said statement.

In speaking of the indebtedness of said Tyack to said Newell, it should have been added, that it was for interests in the Galveston City Company. The estimated value of the property received by said Tyack of said Newell, given as seven thousand dollars, was not a market value, but a speculative value.

When I spoke of being "coerced" by the creditors to execute the power of attorney, I should have used the term solicited. I did not notice the force of the word "coerce" used by me. There was no *coercion* or misrepresention on the part of the creditors; and I wish also

to retract the expression used by me, that if time had been allowed for reflection I should not have signed the power of attorney, and to say, that the opinion was based upon information I had at the time the statement was made; and that now, with an adequate knowledge of the facts, I believe the execution of said power was an act of duty to the creditors and no wrong to said Newell; and I now recognise and sustain the lawful acts of said Warren under said power; and with a knowledge of facts of which I was ignorant when the said statement was made, I disapprove of the alleged sale of the stock of the firm by said Newell to said Doss as alleged, and in violation of the rights of his partners and the creditors of the co-partnership, and retract the allegation that neither said Tyack nor myself had any claim on said Newell or Doss on account thereof; on the contrary, I insist that said sale was a wrong to all the parties interested, and that this suit should be continued and prosecuted.

LINDLEY MURRAY.

UNITED STATES OF AMERICA,
State of New York.

Lindley Murray, of the city, county, and State of New York, being duly sworn, says that he has heard read the foregoing supplemental petition, and knows the contents thereof, and the same is true *is true* of his own knowledge, except as to the matters therein stated on his information and belief, and as to these matters he believes it to be true.

Sworn before me this day of August, 1849.

WM. COXE DUSENBURY,
Commissioner for the State of Texas.

And afterwards, to wit, on the 30th day of August, A. D. 1849, the defendants, by their counsel, filed the affidavit of Peter MacGreal, in the words and figures following, that is to say:

UNITED STATES OF AMERICA,
District of Texas.

TYACK AND MURRAY
vs.
NEWELL AND DOSS. } In equity.

Peter MacGreal, of the county of Brazoria, being duly sworn, deposes and says, that on or about the 10th day of July, 1849, he became acquainted with Lindley Murray, one of the above named complainants, in the city of New York; that, in conversation with said Murray, he stated that Newell had shown him copies of the original and amended bills filed in said cause at the instance of William E. Warren, and had received full information touching said cause, and the said Murray handed to deponent said copies of said bills; and the said Murray stated that he had ever regretted having signed the power of attorney to said Warren, and that, as soon as he had reflected upon the matter, he took

an early occasion to recall and revoke the power given to said Warren by said complainants. Deponent further says, that he suggested to said Murray the expediency of confirming the revocation before given of the power to said Warren, and that thereupon the confirmation of the revocation of July, 1848, by said Murray, and the order to dismiss said cause, together with the statement of said Murray now on *on* file in court in said cause, were, according to the dictation and full approbation of said Murray, drawn up and by him executed after mature deliberation, and fully and voluntarily, in the presence of W. C. Burrell, of New York, and without any sort of promise, inducement, persuasion, or representation from or by this deponent, or any other person, directly or indirectly authorized or prompted by deponent, or by any person on behalf of deponent or S. W. Doss, represented by this deponent, and delivered the same to deponent, to be brought by deponent to Galveston, and filed in said cause.

And deponent further says, that the said Murray, in his presence, requested S. B. Andrews to employ some other counsel in Galveston, if the counsel of Newell could not or would not act for him in the matter, so as to put an end to the cause by discontinuing or dismissing the said cause as speedily as possible.

This deponent further states, that, in none of the interviews had by him with said Murray were the facts of the case of Tyack and Murray vs. Newell and Doss mentioned or adverted to in detail or in general, nor did said Murray ask or seek to be informed of any matter or thing touching the same, but was and appeared to be fully informed, and advised of the same, and acted on his own knowledge and judgment, independent of all advice, solicitation, or procurement of this deponent, Stewart Newell, or any other person, so far as this deponent knows or believes, except that this deponent suggested the propriety of executing the confirmation of the power of revocation; which said confirmation the said Murray fully and voluntarily executed, together with the statement above mentioned on file in this cause.

This deponent has heard the petition and affidavit of said Murray, filed in this case on 28th day of August instant, read, and so far as the same mentions or refers to this deponent the same is wholly incorrect and untrue.

This deponent neither made any misstatements or false representations of facts to said Murray, nor did he practise, or cause to be practised, any frauds upon the said Murray, as is in his said petition and affidavit pretended and alleged; nor did the said Murray make the statement therein alluded to, nor execute the instrument confirming the revocation of W. E. Warren's power of attorney, through or by means of any such representations, false statements, or frauds, but the same were truly and deliberately executed and delivered to this deponent in the manner before described.

PETER MacGREAL.

Sworn to and subscribed before me, this 29th August, 1849.

JOHN C. WATROUS.

And afterwards, on the same day, that is to say, on the 30th day of August, A. D. 1849, the defendants, by their counsel, filed the affidavit of S. B. Andrews; which affidavit is in words and figures as follows, to wit:

The United States district court, district of Texas. In equity.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss.

Seleck B. Andrews, of the city of New York, being duly sworn, doth depose and say, that in the month of July, 1848, in the said city of New York, he frequently met and conversed with the above named complainant, Lindley Murray; that the said Murray informed deponent of his having sent to Galveston a revocation of the power of attorney given by these complainants to William E. Warren, and said Murray expressed great regret at having ever given said power of attorney to said Warren; and said Murray also informed deponent that he had not for a great length of time heard, by letter or otherwise, from said Stewart Newell.

And deponent further says, that the said Lindley Murray was fully advised and informed of all the facts of this cause, as deponent had frequent conversations with said Murray in relation to the suit; that deponent was in Galveston until about the time of the commencement of the first suit against Newell, and heard, or was present, and fully apprised of all the propositions for settlement or compromise made by Warren and Newell, respectively, up to that time, and that deponent fully stated and detailed said propositions to said Murray, and informed him of the same as they in fact were made and occurred; and that, after the return of W. E. Warren to New York, this deponent learned all the propositions made for compromise with Newell by him, and that he, in conversations with said Murray, told him of the same, and gave him complete details in relation to them; that said Murray was acquainted with all the facts on both sides, and so far as this deponent knows and believes, he was correctly informed of everything that occurred between Warren and Newell on the subject in Galveston.

That in July last past the said Murray and deponent had several conversations touching said suit, and said Murray expressed surprise that the same was not dismissed upon the filing of his revocation of July, 1848, and said it was doubtless caused by the influence of the creditors who were operated upon by the malignant advice of Mr. Sherwood in Galveston.

And deponent further says, that on or about the 16th July, 1849, he was about starting from New York for Texas, and said Murray then informed deponent that he had confirmed his former revocation of Warren's power of attorney, by an instrument under seal, and ordered again this suit to be dismissed, and in my presence he handed the same to Peter MacGreal, esq.; and said confirmation of said revocation is now on file in said cause.

And deponent further says, that the said Murray requested this affiant, if he deemed proper, on arriving at Galveston, to employ counsel for said Murray, and to see that the said suit was fully and absolutely dismissed; Peter MacGreal, esq. was present at the time.

S. B. ANDREWS.

Sworn to and subscribed before me this 30th day of Aug., 1849.

JOHN C. WATROUS.

And afterwards, to wit, on the 3d day of September, A. D. 1849, came on to be heard the motion of complainants, by their solicitors, Merriman, Sherwood, and Wagner, to reinstate this cause, whereupon the court made the following order, to wit:

TYACK and Murray
vs.
NEWELL and Doss.

And now on this day came on to be heard the motion of complainants, by their solicitors, Merriman, Sherwood, and Wagner, filed on the 28th day of August, praying the court, for causes therein set forth, to set aside and vacate the decree rendered herein on the 3d day of August, 1849, during the present term of this court; after argument of counsel heard, the court being now sufficiently advised, it is ordered that the motion be sustained, and that the said decree entered as aforesaid on the 3d day of August be and is hereby vacated and set aside.

It is further ordered, that every decree or proceeding had in this cause subsequent to the rendition of the decree aforesaid, be and the same is hereby vacated and set aside.

And afterwards, to wit, on the same day, September 3d, 1849, came on to be heard the motion of complainants by Messrs. Allen & Hale, filed on the 1st day of August, A. D. 1849; whereupon the court made the following order, to wit:

TYACK and Murray
vs.
NEWELL and Doss.

And now on this day came on to be heard the motion of the complainants, filed on the 1st day of August, 1849, by their solicitors, Allen and Hale, praying the court, for reasons therein set forth, to dismiss the bill of complaint in this cause. The argument of counsel having been heard, and the court being now sufficiently advised, it is ordered that the motion be overruled.

And afterwards, to wit, on the 3d day of September, A. D. 1849, the defendants by their solicitors filed the following motion in words and figures as follows, to wit:

In the district court of the United States, for the district of Texas.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and S. W. Doss.

The court having reinstated this case after its dismissal, the defendants move the same be tried on its merits, according to the order and regulations of the court heretofore made.

O. F. JOHNSON,
For S. W. Doss.
J. A. SWETT,
For S. Newell.

Sept. 3d, 1849.

And afterwards, on the fourth day of September, A. D. 1849, the court made the following order, that is to say:

TYACK and Murray
vs.
STEWART NEWELL et al.

On motion, it is ordered that the time for taking and publishing testimony in this cause be enlarged until the 15th day of November next.

And afterwards, on the same day, to wit, on the fourth day of September, A. D. 1849, Stephen W. Doss, by his counsel, filed his motion in words and figures, to wit:

TYACK and Murray
vs.
NEWELL and Doss.

On behalf of one of the defendants, S. W. Doss, in this case, the court is moved to order and direct N. B. Yard, receiver in this case, on or before the next rule day in chancery, to make a full report of all his acts and proceedings in this case, together with a full statement of all the property received by him, the portion sold, the cash, notes, bonds, &c., on hand, and the expenditures made or discharged on account of said property, or otherwise accruing in this case.

O. F. JOHNSON,
Solicitor for S. W. Doss.

September 4th, 1849.

And afterwards, on the same day, that is to say, on the fourth day of September, A. D. 1849, complainants, by their counsel, filed the following affidavit for continuance in words and figures as follows, to wit:

UNITED STATES DISTRICT COURT,
District of Texas.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss. } In equity.

Personally appeared before me, on this 4th day of September, 1849, Frank H. Merriman and Lorenzo Sherwood, solicitors and of counsel for complainants in the above cause, and being severally duly sworn,

do severally depose and say, that the complainants are not ready to go to trial on the issue awarded by the court, before a jury in this cause, for the following reasons, among others, that is to say:

1st. That the motion to dismiss this cause, and the proceedings taken and confessions made by the complainants, have created the necessity of putting in the form of depositions, or otherwise to be given in evidence on the trial, the matters that are now shown by affidavit.

2d. That the witnesses, by whom it is expected these matters can be proved, are residents of the city of New York, and that their testimony cannot be procured in time for the trial of the said issue at this term of the court.

3d. That these matters have come up by way of collateral issues, and by way of motion, and have been mainly urged by affidavits, which would not be testimony before the jury, unless by consent.

4th. That N. B. Yard and Paul Bremond are material witnesses for the complainants on the trial of this cause, without whose testimony the complainants cannot safely proceed to trial; and that the matters it is expected complainants will be able to prove by them were put in the form of affidavit, and placed on the files of this court.

And deponents further say, that the application to postpone the trial of the said issue is not for the purpose of delay, but that justice may be done.

F. H. MERRIMAN,
LORENZO SHERWOOD.

Sworn and subscribed before me, the 4th day of September, 1849.
JAMES LOVE, *Clerk.*

And afterwards, on the 5th day of September, A. D. 1849, the court, on motion of counsel made in open court, made the following order, to wit:

TYACK and Murray }
vs. }
NEWELL and Doss. }

On motion of counsel for defendants, it is ordered, that Ogden Hoffman, of the city of New York, be appointed commissioner to take testimony in this cause.

And afterwards, to wit, on the same day, came on to be heard the motion of Stephen W. Doss, by his counsel, filed on the 4th day of September, A. D. 1849; whereupon the court made the following order, that is to say:

TYACK and Murray }
vs. }
NEWELL and Doss. }

On motion of counsel for defendants, it is ordered, that N. B. Yard, the receiver in this cause, make report to James Love, one of the mas-

ters in chancery of this court, on or before the 15th day of November next, of all his acts and proceedings in this cause, with a full statement of the property received, the portion sold, the money, notes, bonds, &c., on hand, &c., the expenditures made and discharged on account of said property, and all expenses.

And afterwards, on the fifteenth day of November, A. D. 1849, the following argument of parties to this cause was filed, to wit:

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss.

In the United States district court, for the district of Texas, November 14th, 1849.

We, the undersigned, solicitors for complainants and defendants in the above entitled cause, hereby agree that A. Hughes, the deputy clerk of said court, may take out of the post office, in Galveston, all depositions that may be then in said cause, and return them into court; and the same shall be as valid and legal in all respects as if done by the clerk of said court.

Also, that a package here shown to counsel, and signed R. J. Towns, commissioner, across the seals, and containing, as marked, the depositions of Jarvis Dockerill and Peter McGreal, may be opened by said deputy clerk, and that all objections to the manner of returning said last depositions is hereby waived.

O. F. JOHNSON,
Solicitor for Doss.
J. A. SWETT,
Solicitor for Newell.
SHERWOOD,
WAGNER,
And MERRIMAN,
Sol'rs for complainants.

Galveston, Nov. 15th, 1849.

And afterwards, to wit, on the 8th day of September, A. D. 1849, on motion of defendants, by their counsel, made in open court, the following order was made by the court, that is to say:

TYACK and MURRAY
vs.
NEWELL and DOSS.

On motion of counsel for defendants it is ordered, that Ogden Hoffman, jr., of the city of New York, be inserted in the commission to take testimony in this cause, and that the commission issue for Ogden Hoffman, sen., or Ogden Hoffman, jr., or both of them, to take the testimony.

And afterwards, on the same day, that is to say, the 8th day of September, A. D. 1849, the court made the following order, that is to say:

Ordered, that all causes and motions, not otherwise disposed of, stand continued until the next term of this court.

December term, A. D. 1849.

And, on the fifteenth day of December, A. D. 1849, the cause of Tyack and Murray against Newell and Doss having been called, the following order was made by the court, that is to say:

TYACK and MURRAY
vs.
NEWELL and DOSS.

It is ordered that the issue in this cause, directed to be formed by the parties to inform the conscience of the court, to be submitted to a jury, be set down for hearing on *on* the first day of the sitting of the court, after the jury for the term shall be empannelled.

And afterwards, on the seventh day of January, A. D. 1850, Lindley Murray, one of the complainants in this cause, filed his petition, in words and figures following, to wit:

UNITED STATES DISTRICT COURT,
For the district of Texas.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss.

To the honorable the judge of the United States district court, for the district of Texas, the petition of Lindley Murray, one of the complainants in this cause, respectfully shows:

That this suit was commenced in the name of your petitioner and William Tyack by William E. Warren, acting as the[ir] agent under a power of attorney, which your petitioner is informed and believes is already before the court; that, subsequently, your petitioner signed a revocation of said power of attorney, and afterwards a statement, to be used by the defendants' counsel for the purpose of having this suit dismissed.

Your petitioner now desires to retract said revocation, and to revoke said request that the said suit may be dismissed; and he desires, in doing so, to lay before this honorable court the following explanation of his conduct in reference to the matters aforesaid, and the manner in which his course was influenced.

Previous to the formation of the co-partnership between your petitioner and Mr. Newell and Mr. Tyack, your petitioner was insolvent, but entertained hopes, through the assistance of friends and the indulgence of his creditors, of being ultimately able to free himself from embarrassment, and embark again in business. He had for some years been acquainted with the defendant, Newell, and his intercourse with

him had been such as to beget in the mind of your petitioner a strong confidence in said Newell; which confidence your petitioner entertained when the formation of the partnership between your petitioner and said Tyack and Newell was agreed upon; articles of agreement were drawn up and executed, as set forth in the bill in this cause, but your petitioner, from ignorance of the legal effect of such an instrument, supposed and believed he did not thereby become a partner in the concern, but that he merely acquired the right to become a partner in the same when he should contribute his share of the capital. Your petitioner believes that the same opinion was entertained by both said Tyack and said Newell, for they executed to your petitioner a power of attorney, authorizing him to sign the name of the firm, and do many other acts in and about the transaction of its business, which he and they supposed he would have no right to do without such power, until he had paid his share of the capital into the stock.

That, when the firms of Stewart Newell & Co. and William Tyack & Co. became embarrassed, your petitioner had not the least idea that he was liable for their engagements, or that he possessed any power over their assets, and he therefore took no part in the negotiation with the creditors; nor was he informed, either by the creditors or his partners, of the existence or progress of such negotiation; all parties seeming to treat him, as he considered himself, a stranger to the concern.

Your petitioner further shows, that when those negotiations resulted in the determination of the creditors and Mr. Tyack to send out said William E. Warren to Texas as their agent, your petitioner was sent for hastily one morning to call at a lawyer's office and sign a power of attorney; that, on going there, he was shown the power of attorney herein above mentioned, already signed by said Tyack, and was requested to sign it; that he declined to do so, on the ground that he was no partner, and had no authority to confer about the matter. That he was then informed that he was a partner in the concern, and that, although his signature to the power of attorney was for that reason desirable, yet that, if he refused to give it, the creditors and Mr. Tyack would proceed in the business without it; and he was urged to grant the signature as a matter of duty to the creditors of the concern, and as aiding them to collect the demands against it. Petitioner was allowed but a few minutes to decide in; the papers and the agent were to leave the city at once, and every body connected with [and] understanding the affair was in a hurry. Petitioner went hastily to his own counsel, exhibited to him the articles of agreement between himself and Messrs. Tyack and Newell, and having been advised by him that he was a partner, and liable as such to the creditors, he went back and executed the power of attorney, without knowing the reasons for which it was given, or that any consideration was given for it; but feeling coerced into doing so by a sense of duty to persons whom he then, for the first time, discovered to be creditors of his, and who appeared to expect, and as your petitioner conceived had a right to expect, that, as he had no

property or means to pay them, he should at least afford them every facility in his power to regain their property or its avails.

Your petitioner shows that the above is all the coercion exercised upon him, and instead of saying, in the statement formerly made, that said power was obtained from him by coercion, he should have stated that he signed it with great reluctance, at the solicitation of the creditors, and at a period of such haste that no time was allowed for the explanations which would have removed the reluctance from his mind.

Your petitioner further shows, that, after having executed said power of attorney, through some misapprehension or among the different parties, no further explanations were rendered to him; he was left in ignorance of what had led to the giving of the power of attorney, of the extension which the creditors had granted to the firm on their receipt of it, and of the arrangements they had made relative to the expenses of the agency, and of the litigation of any which might attend it. Nor was your petitioner aware of the extent of the apprehensions of the creditors and Mr. Tyack relative to the management of the business in Galveston, nor of the foundation of those apprehensions, but firmly believed that the true source of all the difficulties had been that the goods, with the exception of a very small quantity, remained on hand in Galveston unsold, because Mr. Newell would sell for nothing but cash or cash articles.

Your petitioner further shows, that he received no further information of the progress of events there, from either Mr. Tyack, Mr. Warren, or the creditors of the firm, but that all his information of it was derived from or through said Newell, in whom he continued to repose entire confidence, and whom he believed equally desirous with himself and Mr. Tyack of seeing all the property of the partnership applied faithfully to the payment of its liabilities. From said Newell your petitioner derived the information that William E. Warren, the agent sent out to Galveston, had entirely abused his trust; had wantonly plunged the partnership into an expensive chancery suit, and was consuming the assets in unnecessary and extravagant expense; that said Warren was paid for his services a certain sum per day, and it was, therefore, his interest to protract the litigation as long as possible. That he had himself lost the confidence of the creditors of the concern, and that the result of leaving things to his management would be, that the creditors would get nothing, and the partnership be more inextricably involved than ever; whereas, if the suit were dismissed, he, said Newell, would thereupon make use of the proceeds of a very advantageous sale he had made to Mr. Doss, (and which proceeds were in the mean time under an injunction,) and *and* could apply those proceeds to the payment of the creditors, for [whose] interest the said Newell expressed great concern.

Your petitioner further shows, that during all this time he was ignorant that the creditors had, through Mr. Warren, offered to release the firm on having the goods given up to them, or that they had indem-

fied the bondsmen for the plaintiffs, or in fact that they had any interest in the suit; that on the contrary, he was firmly persuaded that said William E. Warren had betrayed his trust, and was seeking to make all he could out of the suit for his own benefit, and that all the efforts of said Newell were to save the proceeds of the goods for the creditors of the firm.

Your petitioner further shows, that it was under this belief produced by the representations of said Newell, and one Peter McGreal, of Galveston, that he signed the statement recently sent forward to Texas, entitled and designed to be made use of in this cause, and that it was with a similar belief that he had previously revoked the power of attorney given by him to said Warren.

Your petitioner further shows, that since having signed said last mentioned statement, he has been called on by the counsel for the creditors about it; and hearing from him that Mr. Warren's conduct had their approval, that they were surprised at your petitioner's course about the matter, he immediately employed counsel himself to investigate the whole case and examine the pleadings and proceedings in the suit, for the contents of which he had previously relied implicitly on the statements of said Newell and McGreal; that after such examination by said counsel, and consultation with him and with one of the creditors, your petitioner had become satisfied that he was entirely misled about the matter by misstatements and suppression of material facts, as is hereinbefore partly set forth, and that this suit is really prosecuted for the benefit of the creditors of the firm, and with their approval and partly at their and almost entirely at their risk, and that the suit should not be dismissed, but should be kept on foot for their benefit.

Your petitioner, from the knowledge he has derived of the case from the facts so as aforesaid recently brought to his knowledge, has formed an entirely different opinion of it from what he entertained when relying upon the representations of said Newell and McGreal; and your petitioner desires to make the following of some of the allegations of the statements recently signed by him:

1st. As to the statement that neither said Tyack nor myself had any claim on said Newell or Doss in this suit, your petitioner was informed by said Newell and McGreal that the sale to Doss was got up and carried through for the purpose of avoiding a seizure of the goods by the said Warren under some legal process, and thus preserving them or their proceeds for the creditors from the grasp of said Warren, who designed appropriating them to his own use, except such part as should be squandered or wasted in the litigation; and your petitioner, believing this to be the case, considered said Newell's conduct in endeavoring by all means in his power to save the property for the creditors as meritorious, and your petitioner therefore expressed his approbation of it; but since understanding the true state of the case, and learning the terms of the sale, as set forth in the answer of the defendants in this cause, he is convinced the same was illegal, and made with the intent to hinder, delay, and defeat the object of this suit, and the payment of

the creditors. 2d. As to the statements that said Newell had property in the hands of said Tyack, and the said Tyack owed him money, the property spoken of was stock of the Galveston City Company, and other stock of a like character, which was left by said Newell in said Tyack's hands. Its value was set down at seven thousand dollars by both of them, but that value was only a speculation, not a cash value; what its real value was your petitioner does not know, but supposes the same can be better ascertained in Galveston than in this city of New York. The money due by Mr. Tyack to said Newell was instalments due by said Tyack on some shares of stock of the said Galveston City Company, which he held, and which it would be more correct to say, were due to said company of which said Tyack was treasurer; but, as said Newell had been instrumental in getting up the company, and was considered as respecting it, your petitioner considered as due to him.

Your petitioner, in conclusion, desires to represent to this honorable court, that from the time he discovered that he was a partner in the firms of William Tyack & Co. and Stewart Newell & Co., his sole desire about the disposition of the affairs has been to have the assets applied fully and faithfully to the payment of the debts, in whatsoever manner would be most beneficial or satisfactory to their creditors; that influenced by this desire he, in ignorance of many facts, and misinformed as to others, signed the revocation of power and the statement of facts, (hereinbefore referred to,) at the request of said Newell; but now having learned the facts of the case fully, the origin of the course pursued by the creditors, and what their wishes about it are, he desires to recall said revocation and statement entirely.

Your petitioner, therefore, prays that the said suit may be continued and carried on, and that said revocation and statement, so far as they might otherwise affect the same, may be deemed and treated as null and void and of no effect; and that, if before the presentation of this petition, said suit shall have been dismissed, or any other order made therein prejudicial to the plaintiffs, the same may be annulled, and the said suit be left to stand in the same plight and condition as before the signing by your petitioner of said papers, and to proceed in the same manner in all respects as if said papers had not been executed; and that your petitioner may have such further or other relief as may be equitable. And your petitioner will ever pray.

LINDLEY MURRAY.

Subscribed and sworn to by Lindley Murray before me, this eighteenth day of August, A. D. 1849.

GEO. W. MORTON,
Dp. clerk district court, and U. S. commissioner.

And on the same day, to wit, on the seventh day of January, A. D. 1850, William Tyack, one of the complainants in this cause, filed the following petition and revocation, in the words and of the tenor following, to wit:

United States district court, district of Texas.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss.

To the honorable the judge of the district court of the district of Texas.

The undersigned, William Tyack, respectfully represents, that he has reason to believe that his interests in this suit have been seriously hazarded by impositions practised upon him by agents of the defendants, and he prays that this court may receive the explanations he now submits, and that his rights may not be prejudiced by his acts, done in ignorance and procured by fraud.

This suit is instituted for the benefit of the creditors of William Tyack & Co., consisting of the plaintiffs and the defendant, Newell; and the petioner has no other wish than that the property may be thus applied, and has never knowingly done any act the tendency of which he supposed to be calculated to interfere with that object, or to do otherwise than promote it.

Your petitioner further states, that he is informed that a letter was signed by him, and forwarded in March last, to Joseph Swett, esq., of Galveston, Texas, authorizing him to take charge of this suit in his behalf, and procure its dismissal, and repudiating the acts of the agent, Mr. Warren. I have no knowledge of having signed or sent such a letter, or any letter to Mr. Swett, or of the purport indicated, and I believe I never signed any one of the kind; but if my signature is genuine it was obtained by fraud, when I was not in a situation mentally to know or appreciate what was done. I have suffered much from injury to my person from a severe fall in the winter of 1849, and at times have been entirely unable and incompetent to transact business on account of sickness and corporal and mental debility.

I am also informed that I executed to Seleck B. Andrews, in July, 1849, a power of attorney authorizing him to act for me in this suit, and to appoint attorneys and substitutes to settle and compromise all matters in difference between myself, said Murray and Newell, and to dismiss this suit.

I desire to state explicitly to the court that this power, which I am informed is dated the 13th day of July, 1849, was obtained from me by gross fraud, and that I have revoked the same, and revoke and disavow all acts done under it by said Andrews, or any attorney he may have appointed.

Application was made to me in July, 1849, before the date of said power, by said Andrews and one McGreal, to induce me to give such power, and to revoke the power of said Warren, under which the suit was instituted. It was represented to me by them that the creditors were desirous of a compromise, and would take the fund in the hands of the receiver, and discharge their debts. The power was solicited for the alleged purpose of accomplishing that object. I was not compe-

tent, from sickness and debility at that time, to act and decide for myself understandingly, and requested the advice of one of my counsel in this city, (Mr. Crosby,) and submitted the matter entirely to his determination. Mr. Crosby advised me not to execute the revocation and power solicited by Andrews, and I declined doing so. Said Andrews called upon me at my room, where I was confined by sickness at the time, after I had seen my counsel, Mr. Crosby, and distinctly refused to comply with the request to give the power, or to do any act not advised by my counsel. Shortly afterwards said Andrews called again, and informed me that he had just then left the office of my said counsel, and that he, Mr. Crosby, had advised me to sign the paper then presented to me by said Andrews for my signature. I objected to signing it without a note in writing from Mr. Crosby. Said Andrews then stated that Mr. Crosby would have written me a note, but was just at that moment going to court, and had not time, and had directed him, Andrews, to inform me that he had approved of it, and wished me to sign it. Confiding in the assurances of said Andrews I signed the paper, not knowing or reading the contents, but supposed it to be right. That paper was witnessed by John W. Sullivan. I am informed and believe it was the aforesaid revocation of said Warren's power, and the appointment of said Andrews as my attorney. I was afterwards informed by my said counsel, that he had not only not advised the execution of said power to said Andrews, but had distinctly told said Andrews that he, Crosby, advised me not to execute it, and objected to its being done, and did not request or advise, or know of, said Andrews calling on me afterwards to get my signature; and that said Andrews's statement to me that said Crosby had advised its execution was absolutely false. I therefore repeat, it was a fraud upon me.

At the time I discovered the fraud, I was not in a situation to take measures to rectify it till the injury had been done by dismissal of the suit, and have taken measures now to defeat any farther use which might be attempted by means of said power.

I desire to revoke, and do revoke, any power which I may have given to Joseph Swett, as well as the power given by said Andrews to Messrs. Allen & Hale; and I desire that the suit may progress under the direction of the creditors and their counsel, without interference from any source.

WILLIAM TYACK.

Affirmed to before me this 30th October, 1849.

RICHARD E. STILLWELL,
U. S. com'r.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

On this 30th day of October, 1849, personally appeared before me the above signed William Tyack, who, being by me duly affirmed, did

solemnly say that the matters set forth in the above petition by him subscribed are true.

RICHARD E. STILLWELL,
U. S. com'r for the south. dist. of New York.

UNITED STATES OF AMERICA,
Southern district of New York, ss.

I, Alexander Gardner, clerk of the circuit court of the United States of America, for the southern district of New York, second circuit, do hereby certify, that I am well acquainted with the handwriting of Richard E. Stillwell, whose name is subscribed to the jurat of the annexed petition, and that the signature to the same is in his proper handwriting. And I do further certify, that he was, at the time of signing the same, a United States commissioner, duly appointed, under and by virtue of the acts of Congress in such behalf made and provided by the circuit court of the United States of America, for the southern district of New York.

In testimony whereof I have hereunto subscribed my name, and affixed the seal of the circuit court, this thirtieth day of October, in the year of our Lord one thousand eight hundred and forty-nine, and of the independence of these United States the seventy-fourth.

[SEAL.]

ALEX. GARDNER.

To Seleck B. Andrews, and to all whom it may concern:

I, William Tyack, of the city of New York, hereby revoke and annul any and every power of attorney or authority which I have made or executed to said Seleck B. Andrews, and particularly a power of attorney, executed by me to said Andrews, dated on or about the thirteenth day of July, in the year one thousand eight hundred and forty-nine, witnessed by John W. Sullivan, and the execution of which was acknowledged by him, and which relates particularly to matters in difference between myself, Lindley Murray, and Stewart Newell, and to a suit pending in the district court of the United States, in Texas, between myself and Lindley Murray against said Newell and Stephen W. Doss. And I hereby revoke the power of all and any persons who may have been substituted by said Andrews, and particularly the appointment of Messrs. Allen & Hale, counsellors, &c., Texas, as solicitors, attorneys, counsellors, or agents, on my part in said suit; and do hereby prohibit the interference of said Andrews, and of the persons before named, and all other persons deriving authority from said Andrews, in said suit, or in any of the matters therein inserted.

Witness my hand and seal this 20th day of October, 1849.

WILLIAM TYACK. [SEAL.]

Witnesses—JOHN W. SULLIVAN,
M. CAMPBELL.

UNITED STATES OF AMERICA,
State, city, and county of New York.

To all to whom these presents may come:

I, Christien G. Eckel, notary public in and for the State of New York, by letters patent, under the great seal of said State, duly commissioned, sworn, and dwelling in said city, do hereby certify, that this thirtieth day of October, eighteen hundred and forty-nine, personally appeared before me Mr. Matthew Campbell, one of the subscribing witnesses in the foregoing revocation, well known to me, and, being duly sworn according to law, did depose and say, that he knows very well William Tyack, the maker of the within instrument; that he saw said William Tyack sign and seal the same; and that he, deponent, at the same time was requested by said William Tyack to sign his own name thereto, as a subscribing witness thereto, which he then also did.

In testimony whereof I, at his request, have hereunto set my hand, [SEAL.] and affixed my seal of office, the day and year first above written.

CHRISTIEN G. ECKEL,
Notary public, No. 11, *Wall street.*

And afterwards, to wit, on the 7th day of January, A. D. 1850, an issue of fact was by the court ordered to be submitted to a jury, which issue is in words and figures as follows, that is to say:

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss. } In chancery.

In this cause it is ordered by the court, that an issue at law be submitted to a jury upon the pleadings and proofs herein, to determine whether the sale of the goods referred to in the amended bill of complaint, and the several answers of defendants, Stewart Newell and Stephen W. Doss, was or was not fraudulent as to the complainants, and that the said complainants be directed to sustain the affirmative of said issue, and the defendants the negative. And it is further ordered, that the proceedings on the trial of said issue, and the verdict of the jury when given, be made a part of the record in this cause.

And afterwards, on the same day, that is to say, on the 7th day of January, A. D. 1850, submitted their objections to the issue awarded by the court in this cause, and the trial thereof by a jury, in words and figures as follows, to wit:

UNITED STATES DISTRICT COURT,
District of Texas.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss. } In equity.

Be it remembered, that on this 7th day of January, A. D. 1850, the

honorable the district court having awarded an issue as to the question of fraud in the sale of the property, mentioned in the bill of complaint, in this cause, and ordered the same to be tried by a jury; and the complainants having excepted to the awarding of such issue and order for the trial of the same, do assign the following as their objections to the awarding of such issue, and the trial of the same by a jury, that is to say:

I. It is improper to call a jury in cases where the evidence has all been taken by deposition, and the trial is to be had on that evidence.

II. It is only proper to award an issue to be tried by a jury in chancery cases, where the evidence is so conflicting as to leave the court in doubt as to the facts necessary to be established.

III. The mixed questions of law and fact in this case, and resting entirely on the pleadings and proofs on file, make it improper to submit the same to a jury.

And the said complainants, by their counsel, Merriman, Sherwood & Wagner, now here tender this their exception to the awarding of such issue, and the order for trial as aforesaid, and pray the court to sign and seal the same, which is accordingly done.

JOHN C. WATROUS,
U. S. Judge.

And afterwards, on the 9th day of January, A. D. 1850, Messrs. Allen and Hale, acting as solicitors for complainants, filed their objections to the further prosecution of this suit, in words and figures following, to wit:

DISTRICT COURT OF THE UNITED STATES,
District of Texas.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss. } In chancery.

In this cause, and on the part of William Tyack, one of the complainants herein, we, as his solicitors, respectfully object to the further prosecution of the said cause, so far as he is concerned, and in compliance with his declared wishes, so far as is known to us, and in fulfilment of a power of attorney granted by him to S. B. Andrews, esq., and now on file in this court, we now enter a dismissal of the said cause.

EBEN. ALLEN & WM. G. HALE,
Solicitors for William Tyack.

August 9th, 1850.

And afterwards, on the same day, that is to say, on the 9th day of January, A. D. 1850, the following entry was made upon the minutes by order of the court, to wit:

1409.

TYACK & Murray
vs.
NEWELL & Doss.

This day came the parties by their solicitors, when the following issue of facts arriving in said cause, pending on the chancery side of this court, being deemed advisable by the chancellor to be determined by a jury previous to making a decree therein, were directed to be submitted to a jury, to wit:

"In this cause, it is ordered by the court, that an issue at law be submitted to a jury upon the pleadings and proofs herein, to determine whether the sale of the goods referred to in the amended bill of complaint, and the several answers of defendants, Stewart Newell and Stephen W. Doss, was, or was not, fraudulent as to the complainants; and that the said complainants be directed to sustain the affirmative of said issue, and the said defendants the negative. And it is further ordered, that the proceedings on the trial of said issue, and the verdict of the jury, when given, be made a part of the record in this cause."

And thereupon came a jury of good and lawful men, to wit: William J. Bryan, William Nittles, Hal. Runnels, Thomas V. Mortimer, Angus McNeill, J. Coleman Davis, John R. Kinnard, William H. Neiblett, Randal P. Potter, John S. Roberts, Hancock Morris, and James H. Johnson, who being elected, empannelled, and sworn well and truly to try said issue, by consent of counsel, with the assent of the court, are discharged from rendering therein until to-morrow.

And afterwards, on the 10th day of January, A. D. 1850, the following order was made by the court in this cause, and entered upon the minutes, to wit:

The following deposition was read in evidence by the complainants at the hearing, viz:

U. S. DISTRICT COURT, *district of Texas.*

To Archibald Hughes.

Know ye that, reposing special trust and confidence in your integrity and ability, we hereby authorize and require that you call and cause to come before you Willard Richardson and John Brock, citizens of the county of Galveston, Texas, and them duly examine on oath touching and concerning certain matters and things in a cause now depending in the said court, wherein Wm. Tyack and Lindley Murray are plaintiffs, and Stewart Newell and Stephen W. Doss are defendants; and the same examinations, so taken and reduced to writing, you certify under your hand and seal, and send enclosed to this court, without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the honorable John C. Watrous, judge of said court, and seal of court, at the city of Galveston, this 30th day of Octo-
[SEAL.] ber, anno domini 1848, and seventy-third year of the independence of the United States of America.

THOS. BATES, *Clerk.*

WM. TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss.

Interrogatories to be propounded to Willard Richardson, a citizen of Galveston county, the answers to which are to be read in evidence on the trial of the above named cause, now pending in the district court of the United States for the district of Texas, sitting as court of equity, taken at the instance of complainants.

1st interrogatory. Are you acquainted with the parties to said suit or either of them?

2d interrogatory. What trade or profession do you follow?

3d interrogatory. State whether or not you are the editor or publisher of a newspaper printed in the city of Galveston; if yea, what is the name of the newspaper edited or published by you, and how long has it been published there?

4th interrogatory. Look at the printed exhibit annexed at the foot of this interrogatory, marked A, purporting to be a mercantile advertisement, with the name of S. Newell & Co., at the bottom, and state whether or not the same was published in the Galveston News during the time you edited or published said paper, when was said advertisement first published in said paper, and how often, and how long did you continue to publish it therein; by whose order and direction was said exhibit published, and who ordered said publication to be discontinued?

A.

"To merchants and planters."

"New Goods. The subscribers beg leave to call the attention of merchants and planters to the large and well selected stock of merchandise to arrive per schooner 'Sovereign,' which vessel left New York on the 26th of November. This stock of merchandise has been selected with great care and ability at auction, and from private stocks, in the city of New York, under very favorable circumstances, and consists in part of prints, bleached and brown domestics, muslins, negro clothing, lindseys, jeans, checks, pantaloon stuffs, hosiery, threads, clothing of the latest style, boots, shoes, and hats, flannels, iron and hollow ware, hardware, black and green teas, salt, linen goods and Irish linens, willow and wooden ware, and a great variety of other articles equally desirable, altogether comprising as large an assortment, suited to the trade, as has been offered for sale in the market, and will be sold on reasonable terms for cash, or produce only, by

"S. NEWELL & Co.

"☞ Liberal advances made on produce consigned to our friends in New York.—Dec. 10.

5th interrogatory. Do you know Peter McGreal of Brazoria county, and how long have you known him?

6th interrogatory. State whether or not said McGreal was a subscriber for said newspaper in which said advertisement was published; how long has he been a subscriber for said paper, and does he take it now; was or not said newspaper regularly sent to him, and received by him during said time?

7th interrogatory. State whether or not said McGreal ever received said paper personally at the office where it was published; if yea, at what time or times did he so receive it, and was or not said advertisement of "S. Newell & Co." published in the newspaper so taken by him at the said office?

8th interrogatory. Was any other merchandising advertisement published in your paper for "S. Newell & Co.;" if yea, annex a copy as published to your answer to this interrogatory,

9th interrogatory. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or that may be material to the subject of this your examination, or the matters in this cause; if yea, set forth the same fully and at large in your answer.

MERRIMAN, SHERWOOD & WAGNER,
Solicitors for complainants.

WILLIAM TYACK & Lindley Murray
vs.
STEWART NEWELL & Stephen W. Doss.

Interrogatories to be propounded to John Brock, a citizen of Galveston county, district of Texas, *the to* which are to be read in evidence on the trial of the above named cause, now pending in the district court of the United States for the district of Texas, sitting as a court of equity. Taken at the instance of the complainants.

1st interrogatory. Do you know the parties to said cause, or either of them?

2d interrogatory. What business or occupation do you follow, and how long have you followed the same, and where?

3d interrogatory. State whether or not you removed any goods from the store of "S. Newell & Co.," in the city of Galveston, on the 10th day of July, 1848. If yea, at what time of the day did you commence removing said goods; where did you remove them to; how many men and drays were employed; in what manner and by whom were they employed; at what hour of the night was the work of removing said goods completed; and what persons were present at the store during such removal other than those employed in the work?

4th interrogatory. State whether there are any circumstances attending the removal of said goods that led you to believe they had been, or

were about being, fraudulently disposed of? If yea, state what those circumstances were, particularly.

5th interrogatory. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or that may be material to the subject of this your examination, or the matters in this cause? If yea, set forth the same fully and at large in your answer.

MERRIMAN, SHERWOOD & WAGNER,
Solicitors for complainants.

WILLIAM TYACK & Lindley Murray
vs.
STEWART NEWELL & Stephen W. Doss.

In United States district court, sitting as a court of equity.

To Joseph A. Swett, solicitor for Stewart Newell, and Ovid F. Johnson, solicitor for Stephen W. Doss, parties defendants in said cause.

Take notice, that we have this day filed in the office of the clerk of the United States district court, for the district of Texas, the foregoing interrogatories, propounded to Willard Richardson and John Brock, and that we shall, on the 30th day of October, 1848, at the office of said clerk, apply to the judge of said court to appoint a commissioner, to whom a commission will issue, to take the answers of said witnesses to said interrogatories, on or before which time you will file cross interrogatories, if you see cause.

MERRIMAN,
SHERWOOD,
And WAGNER,
Solicitors for complainants.

THE UNITED STATES OF AMERICA,
District of Texas, to wit.

Be it remembered, that on this 31st day of October, 1848, I, Archibald M. Hughes, in pursuance of the annexed commission, to me directed from the district court of the United States, for the district aforesaid, have caused and called Willard Richardson and John Brock to be and personally appear before me, at my office in the city of Galveston, to testify and the truth to say in reference to the matter of controversy in said commission mentioned; and in answer to the annexed interrogatories, the said Willard Richardson, being first examined, being about the age of years, and first sworn in due form of law, deposeth and saith as follows, to wit:

In answer to 1st interrogatory. I am acquainted with Stewart Newell, but none of the other parties.

In answer to 2d interrogatory. I am the editor and publisher of a newspaper.

In answer to 3d interrogatory. I am the editor and publisher of a newspaper in the city of Galveston, called the "Galveston News," and have been so for the last four years last past.

In answer to the 4th interrogatory. I have looked at the printed exhibit marked "A," at the foot of the 4th interrogatory. It was published in the "Galveston News" during the time I edited and published said paper. The advertisement was first published in said paper on the 10th of December, 1847. It was published all of the time, or nearly all of the time, in the tri-weekly, and a portion of the time in the weekly publication of said paper, down to the 9th day of June, 1848. It was published by the order and direction of Stewart Newell, and was discontinued by his order and the order of William E. Warren.

In answer to 5th interrogatory. I do know Peter MacGreal, of Brazoria county; I have known him about three years past.

In answer to 6th interrogatory. Peter MacGreal was a subscriber for said newspaper in which said advertisement was published. He has been a subscriber for said paper since the 5th day of December, 1845, and continues to take it now; the paper was regularly mailed and directed to him at Brazoria at his request, where I presume he received it.

In answer to 7th interrogatory. MacGreal, when in Galveston attending court, was in the habit of taking the tri-weekly publication of said paper, and requested that it should be handed to him by the carrier; I do not remember that he took the paper at the office; the carrier was directed to hand the paper to MacGreal when here, and MacGreal has said to me that he so received the paper of the carrier when in Galveston, but complained that he was sometimes overlooked, and did not get the paper regularly. I believe the advertisement referred to was published in all the papers so taken by McGreal from the carrier.

In answer to 8th interrogatory. Not to my recollection.

In answer to 9th interrogatory. I know of nothing further. And further this deponent saith not.

WILLARD RICHARDSON.

The taking of testimony adjourned until to-morrow, 10 o'clock.

On this 1st November, 1848, and the said John Brock being first examined, being about the age of fifty-two years, and being first sworn in due form of law, deposeth and saith as follows, to wit:

In answer to 1st interrogatory. I knew Stewart Newell, but neither of the other parties.

In answer to 2d interrogatory. I am a drayman, and have been engaged in that business in Galveston for the last eight years.

In answer to 3d interrogatory. I did remove goods from the store of Stewart Newell & Co. on the day mentioned in the interrogatory; I commenced at about half past five o'clock, p. m., removing the goods to the sloop Alamo, lying at the foot of Sydnor's wharf; there were, including myself, eight drays and draymen engaged in removing the

goods. I was employed by Lawrence Frosh, and desired to get as many draymen as I could. The removal of the goods was finished about 10 o'clock at night. There were present during the removal Lawrence Frosh, Joseph A. Swett, Peter MacGreal, Christian Suder, and J. A. Santers, and several other persons whose names I do not now recollect.

In answer to the 4th interrogatory. I thought the goods were being fraudulently disposed of from the fact of their removal so late at night, never having removed goods at such an hour before, and from my asking Mr. Frosh why he could not wait until the morning and was answered, that it was none of my business, to go ahead.

In answer to the 5th interrogatory. I know of nothing further; and further this deponent saith not.

T. J. BROCK.

And I, the said Archibald M. Hughes, commissioner as aforesaid, do hereby certify, that the answers of the witnesses aforesaid were reduced to writing by me in their presence from their own statements, read to them after being so reduced to writing, and then signed by them in my presence.

Given under my hand and seal this 1st November, 1848.

A. M. HUGHES, [L. S.]
Commissioner.

UNITED STATES DISTRICT COURT,
District of Texas.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss. } In equity.

Interrogatories to be annexed to a commission, and to be propounded to Alexander Edgar, of the city and county of Galveston, and to Jesse A. H. Cleveland, esq., of the city and county of Galveston, before John S. Jones, esq., commissioner of this court, on the day of November, A. D. 1849, at ten o'clock in the forenoon, in the city of Galveston. The following to be propounded to Alexander Edgar:

Interrogatory 1st. How long have you been acquainted with Stewart Newell, one of the defendants in this cause?

Interrogatory 2. In the spring of 1848 was Stewart Newell individually indebted to you, if so in what amount? State as nearly as you can.

Interrogatory 3d. Did said Newell, in the spring of 1848, let you have goods out of the store of Stewart Newell & Co., to apply to his indivdual demand; if so, what amount?

Interrogatory 4th. Had you any contract or dealings with Stewart Newell & Co.?

Interrogatory 5th. Did Stewart Newell offer to mortgage you the store of goods of Stewart Newell & Co. in the spring of 1848; if so,

for what consideration? State the conversations, negotiations, and all the circumstances respecting it.

Interrogatory 6th. Do you know any other fact material, or of advantage, to either party in the trial or hearing of this cause? If so, state it.

Interrogatories to be propounded to Jesse A. H. Cleveland, esq.

Interrogatory 1st. Do you know Stewart Newell, the defendant in this cause?

Interrogatory 2d. Did you, in the summer of 1848, have a conversation with said Newell in relation to the sale of the store of goods of Stewart Newell & Co. to Peter MacGreal, or to Peter MacGreal as the agent of Stephen W. Doss? If so, state it fully, and what Newell expressed as his motives to said sale.

Interrogatory 3d. Do you know any other fact or matter material, or of advantage, to the complainants or defendants in this cause, or either of them? If so, state them.

MERRIMAN, SHERWOOD & WAGNER,
Solicitors for complainants.

UNITED STATES DISTRICT COURT,
For the district of Texas.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss. } In equity.

Cross interrogatories to be exhibited and propounded to Alexander Edgar and Jesse A. H. Cleaveland, respectively, witnesses to be produced and examined on the part of the above named complainants.

To Alexander Edgar the following, to wit:

1st cross interrogatory. If you answer that Stewart Newell was individually indebted to you in the spring of 1848, please to state to what amount, how, and on what account was such indebtedness contracted. State the facts particularly on this subject.

2d cross interrogatory. If you answer that Stewart Newell offered to mortgage to you the store of goods of Stewart Newell & Co., in the spring of 1848, state who first proposed it, and why. What did Newell say as to the purchase of said store of goods, and the actual and contemplated capital of the firm of Stewart Newell & Co.? Did he say, at the time, that any part of said capital was to be derived from the sale of stock, in the Galveston city stock, of which you were principal owner? State all he said in regard to it.

3d cross interrogatory. Have you ever told any person that the store of goods of Stewart Newell & Co. had been purchased with your money, or stock belonging to you, and that, in fact, said store in the spring of 1848 belonged to you? Did you ever tell any person that you would have said store sold and transferred, or mortgaged to you, to pay and secure you for money received on the sale of your stock by the firm

of Stewart Newell & Co., or any of the individual members thereof? What have you said to others on this subject?

4th cross interrogatory. Are the accompanying papers annexed to these cross interrogatories, marked respectively A and B, correct and genuine copies of *of* originals, such as they purport to be; if not, in what respect are they erroneous, and what contracts, powers of attorney, or agreements in writing, then in the spring of 1848, executed between you and Stewart Newell, touching your claim to the league of land on which the city of Galveston is situated?

5th cross interrogatory. Did you every receive any money or goods from or through the firm of Stewart Newell & Company, for or on account of the sale of shares of stock in your claim to Galveston city league; if so, state when, how much, from whom. State all the facts particularly.

To Jesse A. H. Cleveland the following, to wit:

1st cross interrogatory. If you answer that you had a conversation with Stewart Newell, such as is referred to in the 2d interrogatory of complainants, please to state the time it occurred, the place, how it was introduced, and the whole tenor of such conversation, both as to what was said by Newell, yourself, and if others were present. State whether Newell was hurried, excited, and spoke without deliberation or caution. Did he profess to give a full and complete explanation of all his motives and reasons, or was what he said a mere hasty and casual reference to the subject of the sale of the store of goods to Doss, and the conduct of Warren and those who represented the alleged interest of the complainants and creditors of Stewart Newell & Co.

Galveston, Nov. 8th, 1849.

J. A. SWETT,
For S. Newell.
O. F. JOHNSON,
A. P. THOMPSON,
For S. W. Doss.

(A.)

REPUBLIC OF TEXAS,
City and county of Galveston.

Know all men by these presents, that I, Alexander Edgar, of the city and county and Republic aforesaid, have, and by these presents do hereby, nominate and appoint Stewart Newell, esq., my true and lawful attorney in the premises, for the purposes following, to wit: I, the the aforesaid Alexander Edgar, having as a colonist under the laws of Coahuila and Texas, and the Republic of Texas, become entitled to one league and labor of land, within the limits of said Republic, and which said league and labor of land was selected and located by me upon the east end of Galveston, now known as the land upon which is located the city of Galveston; and whereas certain persons, known as

Galveston City Company, by a pretended subsequent location and quit claim from the Congress of Texas, have taken possession of and are now in possession of the land aforesaid, and under a pretended conveyance of my claim thereto have and do unjustly deprive me of the benefits therefrom, but for the more perfect possession of the same have entered a suit at law in the district court of this Republic. Therefore I do hereby appoint him, the said Stewart Newell, my attorney, for me and in my name to sell, dispose of, and convey all my right, title, and interest in and unto all and singular ten-thirtieths of the said league and labor of land lying and being on the east end of Galveston island, in the county and Republic aforesaid, and do hereby ratify and confirm all and singular the acts of my said attorney in the premises, and do hereby fully authorize and empower him, my said attorney, to make such disposition of so much of interest in said land as herein named, and in such manner and upon such terms as he shall deem most to my interest in the premises aforesaid.

Witness my hand and seal this twenty-second day of August, A. D. 1845, at the city of Galveston, county and Republic aforesaid.

ALEX. EDGAR. [SEAL.]

Witnesses present—
J. A. DOE,
JOHN DINSMORE.

REPBULIC OF TEXAS,
County of Galveston.

Before me, James P. Nash, notary public in and for the port of Galveston, duly commissioned and sworn, personally appeared Alexander Edgar, who acknowledged the annexed instrument of writing to be an act of his own free will and desire, and signed the same in my presence.

In testimony whereof I have hereunto subscribed my name with the impress of my seal of office, on the 23d day of August, 1845.
[L. S.]

JAMES P. NASH,
N. P., P. G.

BRITISH CONSULATE, *Galveston.*

I, William Kennedy, esq., her Britannic majesty's consul for the port of Galveston, do hereby certify, that James P. Nash, whose name is subscribed to the above written instrument, was at the date thereof a notary public for the county of Galveston.

Given under my hand and seal of office at Galveston, this twenty-eighth day of August, in the year of our Lord one thousand eight hundred and forty-five.
[L. S.]

WILLIAM KENNEDY, *Consul.*

Filed May 28th, 1847, at 11 a. m.
Recorded May 29, 1847, at 9 a. m.
E, 204.

STATE OF TEXAS,
County of Galveston.

I, Oscar Farish, clerk of the Galveston county court, hereby certify, that the above and within is a true copy from the records of my office, [book] H, pages 203 and 204 of the recorded instruments [of] the probate thereof, and the date of filing and registering the same.

In witness whereof I have subscribed my name and affixed seal of said county court, July 24th, 1848.

[L. S.] OSCAR FARISH, *Clerk.*

B.

REPUBLIC OF TEXAS,
City and county of Galveston.

This agreement, made this 22d day of August, A. D. 1845, between Alexander Edgar and Stewart Newell, witnesseth: That said Newell, having been appointed by said Edgar as his attorney to proceed to the United States, and there to dispose of certain ten-thirtieths interest of said Edgar, in and unto the right, title, and interest of him, the said Edgar to a certain league and labor of land, upon which is now built the city of Galveston, republic and county aforesaid, upon the following conditions, to wit:

Said Newell is authorized to dispose of said ten-thirtieth interests, at not less than thirty thousand dollars in par funds, or for any proportion less than the whole at the rate of two thousand dollars for each thirtieth so disposed of; and upon receipt of five thousand dollars to me in hand paid, I bind myself, my heirs, executors and assigns, to convey to said Newell, his heirs and assigns, one-thirtieth interest in said land; and for every five thousand dollars so received by me from said Newell for such sales, to convey to him as aforesaid one-thirtieth interest, until the full sum of twenty thousand dollars is received by me. And it is further agreed, that, should Newell effect a sale or sales of said ten-thirtieths for a greater amount than twenty thousand dollars, then every and all sums over said twenty thousand dollars shall be equally divided between said Edgar and Newell, in addition to the proportions of interest in said land before agreed to be conveyed to him, said Newell; and all sums over said twenty thousand dollars may be received by him in cash, merchandise, or other valuable property, for our joint benefit.

Witness my hand and seal, this 22d day of August, A. D. 1845.

Signed, ALEXANDER EDGAR. [SEAL.]

Witnesses present:
J. A. DOE,
JOHN DINSMORE.

THE STATE OF TEXAS, *county of Galveston.*

The United States of America, district of Texas.

Be it remembered, that on this thirteenth day of November, A. D. 1849, I, John S. Jones, commissioner, duly appointed by the United States district court, for the district of Texas, for the purpose of taking affidavits and bail in civil causes depending in courts of the United States. In pursuance of the annexed agreement of counsel, [I] have caused Jesse A. H. Cleveland to appear before me, at my office, in the city of Galveston, to testify and the truth to say, in the matter in controversy between the parties in the above entitled cause, and in answer to the annexed interrogatories; the said Jesse A. H. Cleveland, being first duly sworn by me in due form of law, and cautioned to answer truly, was then diligently examined upon the annexed interrogatories, and the said Jesse A. H. Cleveland deposeth and answers as follows, to wit:

Answer to interrogatory 1st. I do not know Stewart Newell.

Answer to interrogatory 2d. I recollect having a conversation with said Newell about the time mentioned in Edgar's house, in relation to the sale of the goods mentioned, but cannot now recollect the particulars of that conversation; my impression is now, that I then disapproved of the course then being pursued by Newell in the matter, and I so told him.

Answer to 3d interrogatory. I do not recollect any other fact or matter of advantage to any of the parties.

JESSE A. H. CLEVELAND.

Answer to 1st cross interrogatory. I recollect that I had such a conversation as is referred to in the 2d direct interrogatory, about the time therein mentioned, but cannot now recollect the language of any of the parties present. I can only recollect that I disapproved of the course of both Newell and Warren. I think Dr. Knight was in the room at the time, but do not know that he heard what was said.

JESSE A. H. CLEVELAND.

Subscribed and sworn to before me, this 13th November, 1849.

JOHN S. JONES, *Com'r.*

And I, the said John S. Jones, commissioner as aforesaid, do hereby certify, that the answers of the said Jesse A. H. Cleveland, witness, were reduced to writing by me in his presence, from his own statements, and was read to him after being so reduced to writing, and that the same were then signed by him in my presence.

Given under my hand and scrawl seal, this the 14th day of November, A. D. 1849.

JOHN S. JONES, *Commissioner.*

UNITED STATES OF AMERICA,
District of Texas.

Be it remembered, that on this the 13th day of November, A. D. 1849, I, John S. Jones, commissioner for taking affidavits and bail, duly appointed by the United States district court, for the district of Texas, by virtue of the annexed agreement of counsel, caused Alexander Edgar to be and personally appear before me, at my office, in the city of Galveston, to testify and the truth to say, in reference to the matters in controversy between the parties to the above entitled cause; and the said Alexander Edgar, being by me first duly sworn, and cautioned to answer the whole truth, was diligently examined upon the annexed interrogatories, and in answer to said interrogatories the said Alexander Edgar deposeth and saith as follows, to wit:

Answer to interrogatory 1st. I have been acquainted with Stewart Newell ten or eleven years.

Answer to interrogatory 2d. Stewart Newell was indebted individually to me, about the time mentioned in the interrogatory; the amount I cannot now tell; it was a large amount, however.

Answer to 3d interrogatory. Stewart Newell let me have goods in the spring of 1848, out of the store he then kept on the strand; the goods were received by me in part payment of the debt owed me by Newell; the exact amount I do not know, as all the bills have not been returned to me; the amount however was nearly two thousand dollars.

Answer to interrogatory 4th. I had no contract or dealings with Stewart Newell & Co., but had a contract and dealings with Stewart Newell.

Answer to 5th interrogatory. Stewart Newell offered to mortgage to me the store of goods he kept on the strand in the spring of 1848; the goods were to be mortgaged to secure to me payment for stock in the Galveston city league of land which Newell then had in his possession with power to dispose of. The proposition to mortgage the goods came from Newell to Mr. Joseph, and from Mr. Joseph to me. I saw Mr. Newell afterwards, and had a conversation with him on the subject. I cannot now recollect the conversation that took place between us; we however did not agree upon the terms of the mortgage, for the reason that Mr. Newell was not willing to let me such control over the goods as to make them in my opinion perfect security to me. Mr. Newell, after I had told him that unless I had the goods delivered to me I would have nothing to do with them, told me that one of his objects in so mortgaging the goods was to secure him from annoyance from the creditors of the concern, as he had heard that the creditors intended to send some man out here to investigate the business of the concern. I then told him that I would have nothing to do with the goods.

Answer to 6th interrogatory. Previous to the conversation about the mortgage Newell *Newell* had given to me an order on Tyack for all unsold stock, and money received for stock sold. ALEX. EDGAR.

Signed and sworn to before me, this 13th Nov., 1849.
JOHN S. JONES, *Com'r.*

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Answer to cross interrogatory 1st. Stewart Newell was by the books of the company indebted to me in 1848, the exact amount I cannot tell; some time in 1845 I authorized Stewart Newell to sell a part of my interest in the league of land upon which the city of Galveston is built; he afterwards went to New York and disposed of a part of my interest in said league of land, and thereby became indebted to me.

Answer to cross interrogatory 2d. I did not believe at the time that Newell had any partner in the goods he had, and referred to interrogatory. The proposition to mortgage the goods came from Newell, through Mr. Joseph, to me; his reasons were, as he first said, to secure me for the payment of any money he might receive for the sale of stock or interest in said league of land upon which the city of Galveston is built; he afterwards, however, assigned other reasons, which are set out in my answer to the 5th direct interrogatory. I do not recollect what Newell said as to the purchase of the store of goods or as to the capital, actual or contemplated, of the firm of Newell & Co. I do not recollect that Newell ever said that any part of the capital of the firm of Newell & Co. was to be derived from the stock referred to.

Answer to 3d cross interrogatory. I do not recollect of ever having told any person that the stock of goods of Newell & Co. was purchased with my money; but I thought that the goods Newell had here in 1848, were purchased with money that should have been paid to me; I do not recollect that I ever told any one that the stock of goods did belong to me. I do not recollect telling any person that I would have the goods transferred to me to secure me; but it was my wish to get them transferred to me in payment for stock by me placed in the hands of Newell for sale, and which I understood from Newell he had sold; but he never rendered me any reliable account of his doings in the sale of stock. The accounts rendered to me by Newell from time to time were full of discrepancies.

Answer to 4th cross interrogatory. The annexed papers marked A and B I believe to be true copies of original papers, but I have not the originals to compare them, and cannot positively say they are copies. No other power of attorney or agreement that I know of, than an agreement and power of attorney, copies of which are I believe annexed and marked B, exhibited between us. The annexed papers, A and B, are I believe copies of the only powers of attorney and agreement between myself and Newell in the spring of 1848.

Answer to 5th cross interrogatory. I never received any money or goods from or through Stewart Newell & Co. I received both money and goods from Stewart Newell on account of sales of stock in my claim to the Galveston city league land; I received about $700 in money, the time I do not recollect, but it before his arrival in Texas in 1848; the goods were about $2,000 I think, but cannot say how much, not having all the bills.

ALEX. EDGAR.

Signed and sworn to before me, this 13th Nov., 1849.

JONH S. JONES, *Com'r.*

And I, the said John S. Jones, commissioner as aforesaid, do hereby certify, that the answers of Alexander Edgar, witness, aforesaid, were reduced to writing by me in his presence from his own statement, were read over to him after being so reduced to writing, and that the said Edgar signed the same in my presence.

Given under my hand and scrawl seal, this 14th day of November, A. D. 1849.

JOHN S. JONES, *Com'r.*

UNITED STATES OF AMERICA,
Southern district of New York,
City, county, and State of New York, ss.

Be it remembered, that on this sixteenth day of October, in the year of our Lord one thousand eight hundred and forty-nine, I, Richard E. Stillwell, a commissioner duly appointed by the circuit court of the United States, for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "an act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled *entitled* "an act in addition to an act entitled 'an act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," passed March 1st, 1847, and the act entitled "an act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at the United States courts, in the city of New York, in the said southern district of New York, in the State aforesaid, William E. Warren to testify, and the truth to say, on the part and behalf of the plaintiff, in a certain suit or matter of controversy, now depending and undetermined in the district court of the United States, for the district of Texas, wherein William Tyack and Lindley Murray are plaintiffs, and Stewart Newell and Stephen W. Doss are defendants. And the said William E. Warren, being about the age of 30 years, and having been by me first cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said William E. Warren, and he did thereupon depose, testify, and say as follows, viz.:

I reside in the city of New York, No. 33, Vesey street.

Question. *Was* you at any time, and if so, when, constituted the agent and attorney in fact of the plaintiffs in this cause, and of the creditors of the plaintiffs, and one Stewart Newell? (Counsel for the defendants objects to any answer to this question, unless the written power of attorney held by the witness is produced, such written power being the best and proper evidence.)

Answer. I was so constituted the agent and attorney in fact of both, on or about the 12th of May, 1848, and the documents constituting me such agent and attorney in fact are now on file in Galveston, in the papers in this cause.

Question. Do you know whether they are marked, and if so, do you recollect how? (Counsel objects to any answer to this question, as the production of the papers is the proper evidence to prove the fact exists.)

Answer. I think they are marked. During the progress of the suit, I was called upon to make an affidavit, stating, among other things, the fact of my appointment, and the circumstances under which I was appointed, to which affidavit these powers of attorney were appended and I believe referred to as exhibits A, B, C, &c. The affidavit was part of the proceedings in the cause, and filed with the papers therein. (The counsel for defendants object to the reading of this answer, as it is a substitution of parol for written testimony.)

Question. Did you go to Galveston as such agent or attorney?

Answer. I did, about the middle of May, 1848.

Question. Had you written instructions from the creditors of Tyack, Murray, Newell, or from any or either of the creditors, or the plaintiffs? (Mr. Barrett, counsel for defendants, objects to this question, as it tends to introduce the contents of written papers by parol evidence.)

Answer. I did have written instructions from three of the creditors, who were appointed by the other creditors to act in their behalf in this matter, Messrs. Draper, Brewster, and Spicer, and the letter of instructions given me by them was approved by Captain William Tyack, one of the complainants, which letter of instructions, with Capt. Tyack's approval endorsed thereon, is filed with the affidavits before referred to, and I think referred to in that affidavit as an exhibit.

Question. Had you any separate or special instructions from Capt. Tyack, other than those contained in that letter of instructions referred to?

Answer. I had none.

Question. Was there any understanding or agreement between Capt. Tyack and the creditors, as to the payment of your expenses in going to Texas on the business?

Answer. There was.

Question. What was it?

Answer. Capt. Tyack was to pay me one half, and the creditors were to pay the other half.

Question. For whose benefit were the proceedings to be?

Answer. For the benefit of the creditors of Tyack, Murray, and Newell, as well as of the complainants, Tyack & Murray.

Question. What were your expenses, and who paid them?

Answer. The amount of my expenses, including my compensation, was near three thousand dollars; I do not recollect the precise amount; the same were paid me by the creditors.

Question. Did you ever receive a letter from Capt. Tyack, in the office of John P. Crosby, esq., in the city of New York?

Answer. I never did.

Question. Did you ever receive any letter denonuncing or abusing

you for your course in Texas, concerning the business of William Tyack, Lindley Murray, and Stewart Newell?

Answer. I never did.

Question. Do you know S. B. Andrews, of this city, who has acted for defendants in this matter? (Mr. Barrett objects to this question, as it assumes a fact not proven, to wit, that Andrews did act for the defendants.) Question waived.

Question. Do you know S. B. Andrews, of this city?

Answer. I do.

Question. How long have you known him?

Answer. Since May, 1848.

Question. Do you know of his having acted for the defendants in this matter?

Answer. I do.

Question. What is the general character of Mr. Andrews for truth? (Question objected to, on the ground of its entire and total apparent irrelevancy, no proof whatever having been offered that Mr. Andrews ever was a witness in this cause.)

Answer. So far as I know it is not good. (Mr. Barrett, counsel for the defendants, further objects to the question and answer thereto, because, under this mode of examination, Mr. Andrews has no opportunity to prove and show the falsity of the answer, and, under the practice of taking testimony of this character, every question and answer, no matter how absurd or improper, must appear upon the paper.)

Question. From what you know of his general character for truth, would you believe him on oath? (Objected to.)

Answer. I should hesitate much to do so.

Question. Has Mr. Andrews been sworn? (Waived.)

Question. Did you, as agent and attorney in fact for the plaintiffs and the creditors, endeavor to adjust the matter amicably before taking legal proceedings? (Question objected to.)

Answer. I did.

Question. Did you, in your interviews with Mr. Newell or otherwise, ascertain that he was insolvent? (Question objected to.)

Answer. I did ascertain that he was insolvent before the suit was commenced.

Question. Did you, before commencing this suit, ascertain that Mr. Newell was insolvent?

Answer. I did.

Question. Was Newell doing business in Galveston as a merchant in the name of a firm; and if so, what was the name of that firm, and of whom composed?

Answer. He was doing business in Galveston as a merchant at the time of my [being] there in 1848. The firm name was Stewart Newell & Co.; which firm was composed of Stewart Newell, of Galveston, William Tyack and Lindley Murray, of New York.

Question. Before commencing suit, did you ascertain that Newell had disposed of a portion of the merchandise of the firm for real estate,

which he had obtained in his own name, or diverted the property of the firm from a regular and ordinary mercantile business? (Question objected to, as from the nature of such question the answer must be based upon hearsay or supposition, and not from knowledge of the witness.)

Answer. I ascertained that he had disposed of a considerable amount of goods for his individual benefit; and I was informed that he was making, or about to make, some transfer or sale of the remainder of the goods, but I did not at the time know that he had agreed to take real estate as any part of the consideration for the remainder of such goods. (Answer objected to, as the witness has not stated any fact upon his own knowledge.)

Question. Did you make any propositions to Newell, and if so, what, before commencing suit? (Objected to.)

Answer. I did make various propositions to him before this suit was commenced. I ascertained, from his own statements, that he had disposed of all the goods except about ten thousand dollars' worth, and offered to take these goods remaining on hand in full discharge of the claims of the creditors, which then amounted to about fifteen thousand dollars. The whole amount of the purchases by the firm were, as near as I can now recollect, between nineteen and twenty thousand dollars, including the cost of freight and insurance to Galveston, of which there was paid about five thousand dollars, leaving due at the time I was there about fifteen thousand dollars. This proposition he refused I made several other propositions before the suit was commenced; but the above was the most favorable proposition for him before the suit was commenced.

W. E. WARREN.

Mr. Barrett, counsel for the defendants, proceeded to cross examine the witness, not waiving thereby all legal objections to the form, character, and admissibility of the testimony.

Question. In what business are you now engaged, and with whom are you now connected or employed?

Answer. I am now in the employ of Messrs. Dennis, Perkins & Co., of this city, as corresponding clerk.

Question. In whose employ were you in May, 1848, and shortly previous thereto?

Answer. I was not in the employment of any person specially or particularly; my business was that of a general agent and collector.

Question. What day of the month of May, 1848, did you proceed to Galveston; how long were you there, and when did you return to the city of New York?

Answer. I cannot recollect the day on which I left New York. I was in Galveston just three months, I believe. I returned in the month of September, 1848. I left New York about the 15th of May, 1848.

Question. What was the amount of compensation agreed to be paid you?

Answer. It was eight dollars per day, besides my travelling and other necessary expenses.

Question. Did you ever hear, and do you not know, that William Tyack discountenanced your acts and doings in relation to the matters referred to in your direct examination? (Counsel for the plaintiffs object to that part of the question which interrogates him if he ever heard.)

Answer. I do not know that he ever discountenanced my acts and doings in relation to the matters referred to in my direct examination. Captain Tyack never expressed to me, directly or indirectly, any dissatisfaction. (The plaintiffs' counsel here object to the witness stating what he may have heard.) I have lately heard that Captain Tyack had, at the solicitation of Mr. MacGreal and Mr. Andrews, revoked the power of attorney given to me, and that he has said he did not approve of what I had done. I have also heard that Captain Tyack has said, since he signed the revocation of my power, that he was induced to do so by the representations of MacGreal, Andrews, and others, which he has since learned were utterly false; that he was informed by them, or some one of them, that his friend and counsel, John P. Crosby, esq., had advised his signing said revocation, when in fact Mr. Crosby advised him not to do so. I have also understood that, before he signed the revocation, he expressed himself entirely satisfied with what I had done in Texas.

(Counsel for defendants object to all parts of the answer not responsive to the question.)

Question. Do you not know that Capt. Tyack declined and refused to have or hold any communication with you in relation to your agency in Texas?

Answer. I have never had any interview with Capt. Tyack since my return from Texas; I think Capt. Tyack declined to hold any communication with me in relation to my agency in Texas; I don't know *as* he has refused.

Question. Did you, or any person from you, or by your desire, by your request or procurement, apply at any time to Capt. Tyack to see you, or have an interview, on the subject of your agency in Texas; if yea, state when.

Answer. Upon my return from Texas, I wished to see Capt. Tyack to report my doings there, and I think wrote him a note to that effect, but did not receive any reply; I was informed that Mr. Crosby knew where Tyack was, and requested Mr. Crosby to tell Capt. Tyack I had returned, and wanted to see him.

Question. Can you assign or give any cause or reason for the refusal of Tyack to see you?

Answer. I was informed by Mr. Crosby that Capt. Tyack was very unwell.

Question. Is the reason assigned in your last answer the only cause or reason why Capt. Tyack refused to see you?

Answer. I cannot tell.

Question. Do you know or believe in the existence of any other cause or reason?

Answer. I believe he was influenced more or less by Mr. Newell's agent, S. B. Andrews; I cannot say I know of any other reason why he should refuse to see me.

Question. How do you know that S. B. Andrews was the agent of Mr. Newell?

Answer. From Mr. Newell's statement to me.

Question. When and where did Mr. Newell tell you that Andrews was his agent?

Answer. He told me so at Galveston, when I was there.

Question. Was any person, or were any persons, present when he so told you?

Answer. I cannot now recollect.

Question. Did Newell ever tell you that Andrews was his agent but on one occasion?

Answer. I cannot recollect.

Question. During your stay in Galveston, did you ever write to Capt. Tyack?

Answer. I did.

Question. Upon what subject?

Answer. Upon the business I went there upon.

Question. Did you give him faithful accounts of your business transactions connected with this suit, and with your agency?

Answer. I think the letters [did]; I wrote him 2 letters; they were both before the commencement of this suit, but while the suit was pending in the State court, and they contain faithful accounts.

Question. In answer to a question in your direct examination, you state that you never did receive a letter from Capt. Tyack in the office of John P. Crosby. Did you ever see or read, or hear read, a letter written by Capt. Tyack, or a copy of a letter purporting to be written by him, in relation to your conduct whilst in Texas, as agent in the matters referred to in your examination?

Answer. I have seen a paper purporting to be a copy of a letter written to Mr. Swett, and read it some weeks since.

Question. From whom, or by whom, have you heard (if you ever have heard) the character of S. B. Andrews spoken of disrespectfully?

Answer. By various persons at Galveston and in New York; among whom was Alexander Edgar, Mr. Gildersleeve, Mr. Yard, at Galveston, Mr. John P. Crosby, and think *of* John T. Doyle and Mr. Lindley Murray, one of the plaintiffs, the last 3 of this city.

Question. Is your testimony in relation to Mr. Andrews based upon information received from the persons named in your last answer?

Answer. From them and others, but I do not now recollect the *the* names of the others.

Question. Did any of the persons who you have named in your preceeding answer tell you at any time that Mr. Andrews was unworthy

of belief under oath, and that his character for truth and veracity was bad?

Answer. I do not recollect what those persons said exactly, but the impression left on my mind, from what was said by them, was that he was not a man of good character, or to be believed under oath.

Question. Did they, or either of them, give you at any time any instances of improper conduct by Andrews?

Answer. I do not remember *as* they did; I now recollect that Mr. Crosby said to me, this morning, that Mr. Andrews, as well as McGreal, did misrepresent to Capt. Tyack what his opinions were as to the propriety of his signing a revocation of my power of attorney.

Question. Is the information derived from John P. Crosby, as stated in your last answer, a reason which induced you to swear that Mr. Andrews was unworthy of belief under oath?

Answer. It is.

Question. Can you give any other reason, save what you heard from Crosby, and what you have already stated, why you believe Mr. Andrews to be unworthy of belief under oath?

Answer. I do not know that I can; I think of no other reason at present.

Question. Were any of the persons in Galveston whom you have named unfriendly and hostile to Mr. Andrews?

Answer. I do not know that they were.

Question. Did you ever hear that they were? (Objected to.)

Answer. I never heard that they were unfriendly. Captain Edgar told me he did not pay his rent to him.

Question. Did you or did you not seek and endeavor to find out and discover persons who would traduce the character of Mr. Andrews?

Answer. I never did.

Question. How came it to pass that you spoke to the persons you have named, or that they spoke to you, in relation to the character of Mr. Andrews; and what was your object and motive in speaking to them in relation to Mr. Andrews?

Answer. I cannot now recollect about it; I had many conversations with various persons at Galveston respecting Mr. Newell, and those about him; the object of my inquiry in relation to Mr. Andrews was to ascertain his character.

Question. Do you know, or are you acquainted with any of Mr. Andrew's friends?

Answer. I am not, except Mr. Newell; I may know persons who are his friends, but still I do not know them as such.

Question. Do you not know that Lindley Murray is hostile to Mr. Andrews?

Answer. I do not know that he is; he never expressed any hostility to me.

Question. What did he say to you in relation to Andrews?

Answer. I cannot now recollect what he said exactly; I inferred from what he said he thought Mr. Andrews a bad man.

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Question. In your conversation with Murray was any thing said in reference to the general character of Mr. Andrews for truth and veracity?

Answer. I cannot recollect that there was.

Question. Which of the persons named by you (if any) did you hear speak of Mr. Andrews' character for truth and veracity?

Answer. I cannot now recollect.

Question. Did you hear any of them say any thing, and if yea, what, in reference to his character for truth and veracity?

Answer. My present recollection is, that the parties I have named spoke of him as giving their own opinion of him from what they know of him as it regards his truth and veracity, and in other respects.

(Signed) W. E. WARREN.

The further cross examination of the above witness is adjourned until Wednesday the 17th inst., at 9 o'clock.

Wednesday morning, 17th October, 1849.

Cross examination resumed.

Question. How do you know that John P. Crosby advised William Tyack not to sign the revocation of your power of attorney.

Answer. From Mr. Crosby's statements to me.

Question. Have you any personal knowledge on the subject?

Answer. None except what I derived from Mr. Crosby, and as I think that I heard Mr. Brewster mention the same thing.

Question. Has Mr. Brewster any pecuniary interest in the result of this suit? (Objected to.)

Answer. I believe he has.

Question. Do you not know that he has?

Answer. The firm of Lee & Brewster, of which Mr. Brewster is a member, were creditors of Stewart Newell & Co., when I was in Texas in May, 1848, and I have not been informed of their having settled or transferred their claim since then; I understood that some time since they had commenced suit against William Tyack for the amount of their claim, but I don't know the result.

Question. How do you know (if you do know) that William Tyack expressed himself highly satisfied with what you had done in Texas?

Answer. I know it from statements of Mr. Brewster and Lorenzo Sherwood, esq., who concurred with him upon the subject.

Question. Is not Lorenzo Sherwood a brother of the counsel now present attending as counsel for the plaintiffs and creditors of Stewart Newell & Co.?

Answer. He is.

Question. How do you know that Mr. Brewster and Lorenzo Sherwood conversed with William Tyack upon the subject first spoken of?

Answer. From themselves.

Question. Where does Lorenzo Sherwood reside, and what is his business?

Answer. He resides at Galveston, and is a lawyer by professsion.

Question. Is he interested as attorney, counsel, or agent, in this cause; if yea, how long?

Answer. He is one of the counsel for plaintiffs, and has been from the commencement of the suit.

Question. Did not the paper purporting to be a copy of a letter written by Tyack, and which you have stated that you read, contain expressions censuring and denouncing your conduct as agent in Texas for the creditors of Stewart Newell & Co.?

Answer. Something to that effect.

Question. Can you call to mind the date of the copy letter referred to in the preceding question, or about the date?

Answer. The date of the copy which I saw read is 20th of March, 1849.

Question. Was the alleged approval of your conduct by Tyack, as stated by you in a former answer, prior or subsequent to the 20th of March, 1849?

Answer. Prior to that date.

Question. Did Tyack, to your personal knowledge, express any approval of your conduct as agent in Texas, subsequent to the 20th of March, 1849?

Answer. I have before stated that I have not had any interview with Tyack since my return. He did not, to my personal knowledge, express any approval or disapproval since the 20th March, 1849.

Question. Did Tyack, or any person for him, ever pay to you any part of your expenses and compensation going to Texas, remaining there, and returning?

A. I have never received any money from the hands of Tyack; the money paid to me was paid to me by the creditors, but whether Tyack contributed his portion thereof I don't know.

Q. Please give the name of the person from whom you received the money for your expenses, &c.

A. I received part from Lee & Brewster, I think about $100, and the remainder from Haggerty, Draper & Jones, or Simeon Draper, of that firm.

Q. When and where did you hear of the insolvency of Stewart Newell?

A. I learned it when I was in Texas, from the statements made by him to me, and from various other persons at Galveston. I believe the fact was notorious, and generally known there.

Q. Give the names of the persons in Galveston who told you of Newell's insolvency.

A. Mr. Jones, of the firm of "Jones & Ufford," Albert Ball, George Ball, Samuel M. Williams, Mr. Adams, of the firm of Rice, Adams & Co., F. H. Merriman, Mr. Briggs, of the firm of Briggs & Yard, and various others I do not now recollect.

Q. Did you in any conversation, at any time, and if yea, when, state and declare, that you were satisfied and believed that the firm of

Stewart Newell & Co., or Stewart Newell, were, or was solvent; and did you not so express yourself? State the words you used, to the best of your recollection, and the person or persons to whom you so expressed yourself.

A. I have no recollection of ever having said they, or he, were solvent, since I became acquainted with the circumstances. I don't recollect that I ever did, at any time, declare or say that Stewart Newell & Co., or that Stewart Newell, was or were solvent.

Q. Did you at any time, and if so, when, state, in substance and effect, that if swearing would defeat Newell, that you would defeat him?

A. I do not think I ever did; if I did so, it must have been by way of joke.

Q. From whom did you ascertain that Newell had disposed of a considerable amount of goods for his individual benefit, and that he was making, or about to make, some transfer or sale of the remainder of the goods?

A. From an inspection of the books of the firm I learned that he had disposed of a considerable amount of goods for his individual benefit. I think I first learned from Mr. Yard, or Mr. John H. Bennett, that he was making, or about to make, some transfer of the remainder of the goods, and they were being removed from the store.

Q. To whom did Newell transfer the goods, referred to in the first part of the preceding answer?

A. He transferred or sold upwards of two thousand dollars' worth to Alexander Edgar, on account of individual indebtedness to Edgar.

Q. Did Edgar ever promise, say, or agree, that he would be responsible to the creditors of Stewart Newell & Co., or that he would pay the amount of the goods obtained from Newell to such creditors?

(Objected to.)

A. I don't now recollect.

Q. Do you know any thing upon the subject referred to in the last question? If yea, state all you know.

(Objected to.)

A. I had some conversation with Edgar in relation to it, and understood from him that the goods turned out to him by Newell were to be applied in part payment, or on account of Newell's indebtedness to him, for money collected and received on Edgar's account, and that Newell was still largely indebted to him.

Q. Are you and Newell on friendly terms, or otherwise?

A. We are not on friendly terms.

Q. What has been the cause of the existence of unfriendly feeling between you?

A. His conduct in relation to this business.

Q. Had you and Newell at any time, and if so, when, a personal quarrel and rencontre?

A. On the morning I left Galveston Mr. Newell came up behind me, on my way from the hotel to the steamboat, and struck me with

his cane several times, whereupon I retreated into the hotel, where he followed, and again attacked me; I then clinched him, and threw him down, but was immediately taken off him by some persons present. This is the only personal conflict I ever had with him.

Q. Did you not, a day or two previous to the commencement of this suit, or of the former suit, part with Mr. Newell on apparent friendly terms, and promise to accompany him to church on the following Sabbath?

A. Before the commencement of the suit in the State court I did.

Q. From the time you so parted with him, did you see him until the following Monday morning?

A. I did in church next day.

Q. Did you accompany him to church?

A. I waited at the hotel until after the bell had ceased ringing, for him to call for me; he did not call as he had appointed, and I went to church with another gentleman.

Q. During that Sunday had you any business conversation with Newell?

A. I do not recollect that I had.

Q. When and where, and under what circumstances, did you next see Newell?

A. I think it was the next Monday or Tuesday, but I don't remember where; whether at his store, or on the way from his house to the store.

Q. Did you not accompany the officer, by whom the property of Newell, or Stewart Newell & Co., was attached, when he went to serve the papers?

A. I did not.

Q. Had you any business conversation with Newell, after you promised to accompany him to church, until the attachment or seizure of the property of Newell or Stewart Newell & Co.?

A. I cannot now remember; I think likely I had, but I am not certain about it.

Q. When you promised to accompany Newell to church, had you, at that time, resolved or intended to institute proceedings against him; and if you had not, did any thing subsequently transpire to induce you to do so?

A. According to the best of my recollection, I had resolved to prepare myself for any emergency. On finding the bad character he sustained there, I did not place much confidence in his statements to me, and was very apprehensive that he would, in some way, dispose of the goods, and I think I watched the store for two or three nights before the goods were seized by the sheriff.

Q. Was the knowledge of Mr. Newell's character obtained by you after you promised to accompany him to church, as before stated?

A. I heard a great deal about him before and after that time.

On hearing the above examination read, witness desires to say, that another reason why he would not believe Mr. Andrews under oath is,

that he had already sworn that a certain letter, signed by Capt. Tyack, and addressed to me, being the same letter before referred to, was delivered to me at the office of John P. Crosby, esq., in Wall street, which is not true.

Q. How do you know that Mr. Andrews swore to the delivery of the letter just referred to?

A. I know it from having seen a copy of his affidavit, sworn to on the 2d August, 1849, before A. M. Hughes, commissioner.

Q. Was not the original of said letter, or a copy thereof, delivered to you in the office of John P. Crosby; if not, from whom, and where did you see and read said letter or copy?

A. Neither the original, nor any copy of any letter from Capt. Tyack to me, was ever delivered to me in the office of John P. Crosby; I never saw any such letter.

(Signed) W. E. WARREN.

This deposition is not evidence as to any matters connected with the impeachment of Mr. Andrews, or that recently transpired in New York.

WATROUS.

United States district court for the district of Texas, sitting in equity.

TYACK et al.
vs.
STEWART Newell & Co.

John W. Harris, on part of plaintiff.

I believe I have known Stephen W. Doss since 1838, but not all the time, for he has at some times been absent. I have known him when in the country. The only regular business I have ever seen him at was a cooper. I have seen him at work as a cooper; don't know that he works regularly at his occupation. I don't remember seeing him merchandising. I don't remember that he has been a merchant. I believe he has money, and sometimes trades about, but do not know the extent of his means. I don't believe I know of any property owned by Mr. Doss. I am a stranger to his means; he may have had property. I saw him at work, as a cooper, at Mr. Mill's place last winter, and heard him say, in a conversation with Dr. Hawkins, that he had followed the business of a cooper, in Louisiana, where Dr. Hawkins lives. I have been so little about Brazoria that I could not form any opinion as to his means; seeing him occupied as a cooper, I thought his means limited; he may have had means, however. Mr. Doss, so far as I know, was a man of limited means; he did not seem to have more than the proceeds of his labor; he was not regarded as an idle man, and may have had more means.

JOHN W. HARRIS.

Subscribed and sworn to before me, this 7th day of August, A. D. 1848.

JOHN S. JONES, *Com'r.*

Cross examined.

I do not remember how long he has lived here. I knew him in 1838, and I think has been absent from Brazoria county most of the time since 1839; has been there on occasional visits since, and staid some short.

JOHN W. HARRIS.

Sworn and subscribed before me, this 7th August, 1849.

JNO. S. JONES, *Com'r.*

John A. Settle, taken for plaintiff.

About the time the Tremont bell rung for supper, on the 10th July, 1848, I met McGreal in the Tremont House; he asked me if I had any negro men to hire. I had none, but told him I could show him where there were some, and we went up to Mr. Span's together; he asked Mr. Span if he had any negroes, and if so, to send them down to a brick store near Doswell's wharf. I drove Mr. McGreal down to the store and left him there. Mr. McGreal said he wanted several negro men, and wanted them that night. I told McGreal I knew what he wanted with the negro men; that he had purchased the goods of Newell; McGreal admitted the purchase, and said he had made a very good trade. Mr. McGreal said he was anxious to get the goods away to where he was known, and where he could give security; he requested me not to mention the removal of the goods to Merriman, and I told him that Merriman already knew of the removal of goods by Newell and Dr. Knight, which McGreal then said was a box of papers.

JNO. A. SETTLE.

Subscribed and sworn to before me, this 7th August, A. D. 1848.

JNO. S. JONES, *Com'r.*

UNITED STATES DISTRICT COURT,
District of Texas.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss. } In equity.

Personally came before me, Joseph Emerson, of the city of Galveston, and being by me duly sworn, says: That on the morning of the 12th July last deponent was at the west end of Galveston island, at the house of Mrs. Hard; that about daylight in the morning, Mr. Jarvis Dockrill came there; that Mr. Dockrill informed deponent he

came from Galveston about midnight; that Mr. Dockrill and deponent rode from there to Velasco in Mr. Winne's carriage; that on the way to Velasco said Dockrill asked deponent what deponent would ask to tow the sloop Alamo up to Brazoria. Deponent told him twenty-five dollars. Dockrill asked me if I could hook on to her as soon as I got down there. I told him I could not tell until I got there, as the steamer Samuel M. Williams, then lying in the Brazos, and of which I was the commander, was out of repair. Upon my arrival, I found the boat in a condition not to be moved for a day or two, at the expiration of which I learned the goods, on board the Alamo, had been taken by Mr. Yard, and I had nothing further to do with the matter.

JOSEPH EMERSON.

Subscribed and sworn to before me, this 5th day of August, A. D. 1848.

The foregoing affidavit, it is agreed, shall be read in evidence the same as though sworn to, subject to legal objections; the swearing is waived.

A. P. THOMPSON.

The following document was read in evidence at the hearing by complainants *at the hearing:*

THE STATE OF TEXAS,
County of Galveston.

At a term of the district court, begun and holden at the city of Galveston, within and for the county of Galveston, on the 22d day of May, A. D. 1848, before the honorable Joseph C. Megginson, judge thereof, the following cause came on for trial, viz:

WILLIAM TYACK and LINDLEY MURRAY, plaintiffs,
vs.
STEWART NEWELL.

Petition filed June 3, 1848.

The State of Texas, first judicial district, Galveston county, to the honorable the district court of the first judicial district:

The petition of William Tyack and Lindley Murray, who are citizens of the State of New York, plaintiffs, against Stewart Newell, who is a resident of the county of Galveston, and citizen of the State of Texas, defendant, respectfully sheweth:

That heretofore, to wit, on or about the twenty-fifth day of September, A. D. one thousand eight hundred and forty-seven, at the city of New York, your petitioners and the said defendant, Stewart Newell, entered into a co-partnership contract or agreement, and which is in the words and figures following, that is to say:

NEW YORK, *September 25th*, 1847.

The undersigned have this day formed a co-partnership under the firm and style of Wm. Tyack & Co., in New York, and Stewart Newell & Co., in Galveston, Texas, upon the following terms and conditions:

1st. That the nature of the business to be transacted by said firm shall be a commission, general, and auction business.

2d. That the said co-partnership shall commence on the 25th day of September, 1847, and terminate on the 25th day of September, 1852.

3d. That the several parties of this contract shall each contribute towards the capital of said firm the sum of five thousand dollars, in form and manner as follows:

William Tyack shall contribute $5,000 cash within 90 days.
Stewart Newell " " " "
Lindley Murray " " " "

4th. That if the business should prove such as to require an augmentation of capital, then each of the parties to this contract shall advance such amount as may be required, or his actual ability permit; and should either of said parties advance a larger proportion than the others, then for such excess of capital the party furnishing the same shall be allowed interest thereon at the rate of six per cent. per annum.

5th. That in consideration of the expense and labor heretofore incurred by Stewart Newell in paving the way for the contemplated business, as well as his influence in the State of Texas, it is agreed and understood that during the term of this agreement he shall be entitled to one-quarter of the nett profits of the business before any division of said profits be made; the balance to be divided equally between the parties to this contract.

6th. That although the name of Lindley Murray shall not at present appear in the advertisement of this co-partnership, yet it is expressly agreed that he is and shall be considered an equal partner with the other parties to this contract, and as such shall share equally in all the profits of said business.

7th. That the business shall be conducted as follows: William Tyack and Lindley Murray shall have charge of the same in New York, the former acting as cashier, and having a general supervision of the business, and the latter having under his immediate charge the books and the general conduct of the transactions of the firm; that Stewart Newell shall have charge of the business in all its departments in the city of Galveston. And it is further expressly understood and agreed upon, that the parties having charge of the business in New York shall, at least as often as once in a month, transmit to the party in Galveston an account current of the transactions of the firm in New York; and that in like manner the party having charge of the business in Galveston shall at least as often as once a month transmit to the party in New York an account current of the transactions of the house in Galveston.

8th. That each and all of the parties to this contract do hereby bind themselves, so long as this agreement is in effect, never to endorse for, or become security for, any one in any way whatever, or to loan the moneys of the firm without the specific consent of each of the parties herein named. And in case either of said parties shall at any time be proven to have violated this article of agreement, it is expressly agreed upon and understood that his interest in the concern shall be held liable for such dereliction, and he shall from that time forth cease to be a member of this co-partnership.

9th. That in view of this business being a new one, and experimental in its nature, it is hereby expressly understood, that not more than the sum of fifteen hundred dollars shall be drawn out of the concern for the personal expenses by either partner for the term of one year from date of this contract.

10th. That in case of any difficulties or disputes in relation to the business between the parties to this contract, which cannot be amicably adjusted among ourselves, it is agreed that such difficulties shall be settled as follows: That the contending parties shall each select such umpire as to him seem fit, and that the judgment of such umpires shall be deemed binding; or in case the umpires thus chosen shall not agree, that they shall select a third, whose decision shall be final.

In witness whereof we have hereunto set our hands and seals, this twenty-fifth day of September, in the year one thousand eight hundred and forty-seven.

(Signed) WM. TYACK, [L. S.]
(Signed) STEWART NEWELL, [L. S.]
(Signed) LINDLEY MURRAY. [L. S.]

And your petitioners further show, that at the time of the negotiation between your petitioners and the said defendants for the formation of the said co-partnership arrangement, that the said defendant held himself out to your petitioners as a man of ready means and capital, and well able to advance the said five thousand dollars; and also held out to your petitioners, and represented to them, that he, the said defendant, could control a great amount of profitable business in the State of Texas of the nature mentioned and expressed in the said co-partnership agreement; and that your petitioners, relying upon said representations, and believing the same to have been made in good faith by the said defendant, were induced thereby to enter into the said co-partnership agreement; whereas your petitioners aver, that the said representations on the part of the said Newell were false and fraudulent, both as to his ability to advance the said amount of five thousand dollars, or to control the said amount, or any considerable amount of profitable business, as by him represented and held out to your petitioners.

And your petitioners further show unto your honor, that your petitioner, the said William Tyack, subsequently to the date of the said agreement and [in] pursuance thereof, on or about the month of November, A. D. one thousand eight hundred and forty-seven, at the city

of New York, did advance the sum of about five thousand dollars in cash, and which was employed exclusively in the purchase of goods under the said agreement, and in paying the freight, charges, and expenses upon said goods, and other goods also purchased by your petitioners and the said defendant, and destined for the Texas market. And further, your petitioners show, that in addition thereto your petitioners and the said defendant extended their said purchases of goods in the said city of New York during the said month of November and the fore part of December following, in pursuance of said agreement, about fifteen thousand dollars, which, in the whole, would make their said purchases amount, at invoice prices in the city of New York, to the sum of about eighteen thousand dollars, besides the freight, charges, and incidental expenses, and which, added to the said purchases, would make the aggregate amount of nearly nineteen thousand dollars.

And your petitioners further show, that neither your petitioner, the said Lindley Murray, nor the said defendant Stewart Newell, at any time of making the said purchases of goods, or at any time since, have advanced any capital out of their private funds to be put into the said co-partnership concern; but your petitioners aver, that all the said purchases of goods, except those paid for with the cash advanced by your said petitioner, William Tyack, were purchased solely and exclusively on the credit of the said co-partnership; and that the bills of goods purchased were settled for, as your petitioners believe, entirely by drafts or bills, drawn by Stewart Newell and company on William Tyack and company, and which said bills or drafts, now outstanding in the city of New York, and for which your petitioners are now liable, and which are now due, with the exception of about twenty-four hundred dollars, amount to about the sum of fifteen thousand dollars.

And your petitioners further show, that the said goods, purchased as aforesaid, were soon thereafter shipped to Galveston, in the said State of Texas; that the said defendant Stewart Newell opened the said house or firm of "Stewart Newell & Co.," at the said city of Galveston, on or about the first of January, A. D. one thousand eight hundred and forty-eight, and commenced the sale of the said goods about that time, and has since continued to do business in the city of Galveston, down to the present time, under the said name, style, or firm, of "Stewart Newell & Co.;" and that since opening the said house or firm, has sold and disposed of the goods obtained as aforesaid, to the amount of about ten thousand dollars, or thereabouts; and further, that the only remittances or consignments made by the said defendant to your petitioners, or to the said firm or house at New York, of "William Tyack & Co.," consists of thirty barrels of molasses and nineteen bales of cotton, to the value of about seven hundred and fifty dollars.

And your petitioners further show unto your honor, that since the commencement of the sale of the said goods at Galveston by the defendant, he, the said defendant, from time to time, has falsely and fraudulently held out and pretended to your petitioners, that he had actually laid out and expended in the city of New Orleans the said

amount of five thousand dollars, agreed by him to be advanced as capital in the said co-partnership agreement; whereas in fact and truth, as your petitioners have very lately learned, the said defendant has only made purchases, in the said city of New Orleans, to the amount of two hundred and thirty-four dollars, or thereabouts; and that now the said defendant acknowledges that amount to have been purchased with the proceeds of the said goods obtained in the city of New York, but which said amount your petitioners have good cause to believe, and do believe, was purchased on the credit of the said firm of "Stewart Newell & Co.," and that the same remains unpaid; and for which amount your petitioners, together with the said defendant, are jointly liable.

And your petitioners further show, that your petitioners, often times since the said defendant opened the said house at Galveston, have urged and solicited the said defendant to give them the statement of the concerns or business of the said firm or house, and had well hoped that he would do so in the said monthly statement, as agreed by him to be made; but instead of giving to your petitioners the said true and accurate statement, he has often times held out, and falsely and fraudulently pretended to your petitioners, that he was unable to sell the said goods; that he sold for cash only, or for staple products of cash value, and that he had on hand, and safe as against losses, some eighteen thousand dollars' worth of goods, thereby intending to lull the suspicions of your petitioners, by pretending great carefulness and prudence; whereas your petitioners are informed and believe, and therefore charge the truth to be, and aver, that the said defendant, at the time of holding out these false and fraudulent representations, had disposed of about one-half of the said goods, and most of the avails thereof appropriated to his own private benefit and to his individual purposes; and, as your petitioners also charge, upon information and belief, without the remotest prospect of ability on the part of the said defendant to make good to your petitioners any considerable portion of the [goods] so misapplied by him, and leaving your petitioners alone to bear the burden of discharging the said co-partnership debts as aforesaid contracted.

And your petitioners further show, that the said defendant, further contriving and intending to impose on your petitioners, has held out and pretended to them that he had purchased on the Trinity river some three hundred and twenty bales of cotton, to be paid for in goods at Galveston out of the stock of goods hereinbefore mentioned, and that he intended to consign the same to your petitioners at New York as soon as the same could be got down from the said Trinity river to the said city of Galveston; but your petitioners aver, upon information and belief, that the said defendant has neither purchased or contracted for cotton to any considerable amount as pretended by him; and your petitioners verily believe, that the said further false and fraudulent representations have been put forth with a view further to deceive, impose upon, and injure your petitioners in the premises.

And your petitioners further show unto your honor, that the said defendant, if suffered to continue in the possession, and to have the control of the said goods, and to manage and conduct the affairs of the said firm as he has hitherto done, will wholly ruin and impoverish your petitioners, besides doing great injustice to the said creditors of your petitioners and the said defendant.

And your petitioners further show that, from the best of their knowledge, information, and belief, the said Stewart Newell, since the said co-partnership agreement was made and goods purchased, has already placed it beyond the power of your petitioners to obtain from the said goods or the proceeds thereof more than one-half the amount of their cost, either for their own benefit or the benefit of their said creditors, and they are already measurably remediless in the premises, and they greatly fear will become hopelessly so, unless they can have the aid and power of this honorable court to protect them, through its remedial and restraining process and otherwise.

And your petitioners further show, that they have great cause to fear, and do greatly fear, that unless a receiver is appointed in the first instance to take possession of the said goods now remaining on hand and belonging to the said firm of Stewart Newell & Co., as well as the books, papers, notes, debts, and choses in action belonging to the said firm, the same will be sold, secreted, transferred, assigned, or in some way disposed of, by the said defendant to the great detriment and injury of your petitioners and their said creditors.

Your petitioners further show, that the said defendant as they are informed and believe to be true, has sold large amounts of said goods purchased on the joint account of your petitioners and himself to his own individual creditors, and applied said sales on his individual debts; but to what amounts, or to whom, your petitioners cannot now specifically state and set forth, but when discovered, your petitioners pray that the said individual creditors of the said defendant, whose purchases of said goods have been applied to the individual debts of the said Stewart Newell, may be made parties to this suit, and they compelled to account for any and all goods respectively which may so have been sold to and applied by them; and also that their names when discovered may be inserted in this petition as parties defendants, with proper and apt words to charge them in the premises aforesaid.

And your petitioners, in consideration of the said premises, and the manifold injuries and great injustice had, done, and intended on the part of the said defendant towards your petitioners, do hereby pray that the said co-partnership may be dissolved; that the said defendant, Stewart Newell, may be compelled to account to your petitioners, as well as your petitioners to him, under the direction and in the manner prescribed by this honorable court; that the concerns of the said partnership business, and all matters connected therewith directly or remotely, may go into liquidation; that the co-partnership effects and the proceeds of the original partnership effects, whether standing in the name of the said firm of "Stewart Newell & Co.," or in the individual

name of Stewart Newell, may go into the hands of a receiver, appointed by, and to be under the control and direction of, this honorable court, and who shall be empowered to collect, keep, and take care of all and singular the property, goods, chattels, effects, chose in action, accounts, debts, and things of the said firm of "Stewart Newell & Co.," and also the said firm of "William Tyack & Co.," and who shall pay over or apply said property, goods, chattels, &c., to the payment of the said co-partnership debts, or otherwise, as directed from time to time, or by final decree from this honorable court; and that the said Stewart Newell may be decreed to pay to your petitioners, or either of them, such sum or sums of money as to the said court should appear equitable; and that your petitioners, or either of them, and the said defendant, may be enjoined and restrained from selling, assigning, transferring, or in any manner interfering with the said co-partnership property, effects, choses in action, books of account, debts, dues, and demands, or proceeds of the said co-partnership property, *effects, choses in action, books of account, debts, dues, and demands, or proceeds of the said co-partnership property*, whether standing in the name of the said firm of "Stewart Newell & Co.," or in the individual name of the said defendant, until the further order of the court thereon; and further, that a preliminary receiver be appointed to take, keep, and preserve all and singular the said property, effects, &c., until such appointment may be confirmed on motion to the court, or some other person substituted or appointed as such receiver on such motion, and with such powers as may be prescribed by the court; and that your petitioners may have such other and further or different relief in the premises as may be agreeable to equity.

To the end, therefore, that your petitioners may have the relief herein prayed for, and such other and further or different relief as may seem proper; and to the end, also, that the said Stewart Newell may show, if he can, why the said relief should not be granted, may it please this honorable court, in addition to the said writ of judication, to issue process in favor of your petitioners against the said Stewart Newell, commanding him to be and appear at the next term of this honorable court, to be held in the county of Galveston, then and there to answer this petition; and further, that the said Stewart Newell may be bound by all the proceedings in this cause from the filing of this petition; and your petitioners, &c.

WILLIAM TYACK,
LINDLEY MURRAY,
Plaintiffs.

F. H. MERRIMAN, SHERWOOD & WAGNER,
Attorneys for plaintiffs.

Affidavit.

STATE OF TEXAS, *Galveston county, ss.*

On this third day of June, A. D. one thousand eight hundred and

forty-eight, personally came before me, William E. Warren, who being by me duly sworn, says he is the agent and attorney in fact of the above named petitioners, plaintiffs in this cause; that the said petitioners reside in the city of New York; that the oath of neither of [them] could be obtained to the jurat of this petition without much delay; that he believes he is better acquainted with the facts of the case as a whole than either of the said petitioners; and further says, that he has read the foregoing petition, and knows the contents thereof, and that the same is true to the [best] of his knowledge, information, and belief.

W. E. WARREN.

Sworn to and subscribed before me, June 3d, 1848.

C. W. BUCKLEY,
Judge 7th judicial district.

Mandate.

The State of Texas to the clerk of this district court of Galveston county:

You will please issue an injunction as prayed for in the foregoing petition, restraining the defendant Stewart Newell, and all other persons acting by or under his authority, from disposing of or intermeddling in any manner with the goods, stock in trade, property or effects, books, accounts, debts, dues, &c., belonging to the firm or concern of Stewart Newell and company until the further order of the court herein; also a writ directed to the sheriff of the county aforesaid, commanding him to seize and take into his possession all the effects of said firm, whether goods, wares, &c., or books of account, notes, debts, papers, &c., of every description; and the same, when so seized and taken possession of, deliver to William E. Warren, who is hereby appointed receiver for said firm, with full powers to liquidate the business of said firm by disposing of all the stock in trade, &c., and collecting all the outstanding debts due thereto, and applying the proceeds to the payment of the firm liabilities, subject to the orders of the court, upon his entering into bond, payable to the said firm of Stewart Newell and company, in double the value of such stock and trade and the said debts, conditioned for the faithful performance of his duties as such receiver, of which security you will determine; upon condition, however, that plaintiff first give bond and security in the sum of twenty thousand dollars, conditioned as the law directs.

C. W. BUCKLEY,
Judge 7th judicial district.

Injunction bond, filed June 3, 1848.

Know all men by these presents that we, William Tyack and Lindley Murray, of the city of New York, Henry Williams, Charles W. Adams, of the city of Galveston, in the State of Texas, are held and firmly bound unto Stewart Newell in the sum of twenty thousand dol-

lars, to be paid to the said Stewart Newell; and for which payment, well and truly to be made, we bind ourselves and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 3d day of June, in the year of our Lord one thousand eight hundred and forty-eight.

The condition of this obligation is such that, whereas the said above bounden William Tyack and Lindley Murray have filed their petition in the district court of the first judicial district for the county of Galveston, and such proceedings have been had that an injunction has been granted thereon in accordance with the prayer of the said petition: Now, therefore, if the said William Tyack and Lindley Murray, complainants, shall abide the decision which may be made thereon, and shall pay all sums of money and costs that may be adjudged against them, or either of them, if the injunction be dissolved either in whole or in part, then the above obligation to be void, otherwise to remain in full force and virtue.

WILLIAM TYACK, [L. S.]
By W. E. WARREN, [L. S.]
Agent and attorney in fact.
LINDLEY MURRAY, [L. S.]
By W. E. WARREN, [L. S.]
Agent and attorney in fact.
HENRY H. WILLIAMS, [L. S.]
C. W. ADAMS. [L. S.]

I approve of Henry H. Williams and Chas. W. Adams, sureties to the above bond, for the uses and purposes therein mentioned.

J. W. MOORE,
Clerk D. C. G. C.

Writ of injunction, issued June 3d, 1848.

STATE OF TEXAS,
First Judicial district, Galveston county.

To Stewart Newell, his agents, attorneys, clerks, and all persons acting by or under his authority, greeting:

Whereas a petition has been filed in the district court of the county of Galveston, in favor of William Tyack and Lindley Murray, against Stewart Newell, and among other things praying for an injunction against the said Stewart Newell, and such proceedings have been had thereon that the said injunction has been granted by the court, as prayed for in the said petition.

These are, therefore, to command you, the said Stewart Newell, your agents, attorneys, clerks, and all persons acting under your authority, from selling, assigning, transferring, or in any manner interfering with the co-partnership property, effects, choses in action, books of accounts, debts, dues, and demands, or proceeds of the said co-partnership property of the said firm of "Stewart Newell & Co.," whether

standing in the name of the said firm of "Stewart Newell & Co., or in the individual name of you, the said Stewart Newell; and this you, or either of you, are not to disobey, under the penalties and fines to be inflicted by the said court of disobedience to its orders.

Witness James W. Moore, clerk of said court, with the official seal of said court, at Galveston, this third day of June, A. D. one thousand eight hundred and forty-eight.

[SEAL.]

J. W. MOORE,
Clerk D. C., G. C.

Sheriff's return.

Received, June 5th, 1848, and executed same day, by serving the defendant with a certificate copy of the plaintiffs' petition, and a true copy of this writ.

P. BRYAN, *Sheriff G. C.*

Writ of seizure, issued June 3, 1848.

STATE OF TEXAS,
First Judicial district, Galveston county.

To the sheriff of the county of Galveston, greeting:

Whereas a petition has been filed in this court by William Tyack and Lindley Murray against Stewart Newell, praying for an injunction and the appointment of a receiver of the goods, chattels, property, and credits of the firm of "Stewart Newell & Co., and such receiver has been appointed; and whereas it has been represented to the said district court that the said property, goods, chattels, and credits of the said firm of "Stewart Newell & Co." are in danger of being assigned, transferred, secreted or misapplied:

This is, therefore, to command you, the said sheriff, to seize and take into your possession all the effects of the said firm of "Stewart Newell & Co.," whether goods, wares, &c., or books of account, notes, debts, papers, &c., of every description, and the same, when so seized and taken possession of, to deliver to William E. Warren, the receiver appointed in the said cause, and on the prayer of the petition of the said William Tyack and Lindley Murray, and that you make returns of your doings hereon, so that you have the same before the next district court to be held in the county of Galveston, on the fifth Monday after the third Monday in October next; and have you then there this writ.

Witness Jas. W. Moore, clerk of the said court, the third day of June, one thousand eight hundred and forty-eight, with the official seal of said court.

[SEAL.]

Sheriff's return.

Received June 3d, 1848, and executed same day by seizing and

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taking possession of all the goods, wares, and merchandise, and books, in the store of, and belonging to, Stewart Newell & Co.

P. BRYAN,
Sheriff, G. C.

Previous to my having completed the schedule of property seized, the injunction was dissolved on motion of defendant's counsel, and I was ordered by the court to restore to the possession of Newell all the property, books, papers, &c., seized by virtue of this writ, and Newell having given me a receipt for the same, superseded the necessity of an inventory.

P. BRYAN,
Sheriff, G. C.

Summons issued June 5th, 1848.

THE STATE OF TEXAS,
County of Galveston.

District court, fall term, 1848.

To the sheriff of said county, greeting:

You are hereby commanded to summon Stewart Newell, if he be found in your county, to be and appear before the honorable the judge of the district court of the first judicial district, at a court to be holden within and for the county of Galveston, on the fifth Monday after the third Monday of October next, to answer the complaint of William Tyack and Lindley Murray, in an action as set forth in the petition of which you will serve the said Stewart Newell with the accompanying copy; herein fail not, and have you then and there this writ.

Witness James W. Moore, clerk of said court, this fifth day of June, A. D. 1848.

[SEAL.] Attest: J. W. MOORE, *Clerk.*

Sheriff's return.

Received and executed same day issued, by serving the defendant with a certified copy of the plaintiffs' petition, and a true copy of this writ.

P. BRYAN, *Sheriff, G. C.*

Newell's affidavit, filed June 12th, 1848.

THE STATE OF TEXAS,
County of Galveston.

I, Stewart Newart, make affidavit and say, that William E. Warren, who represents himself as the agent of William Tyack and Lindley Murray, of New York, has represented and said that he intended to take the stock of goods now in the store occupied by me on the strand,

and remove the said goods to New York, and there dispose of them; that he, the said Warren, said he had given bond and security, and that I, said Newell, must look to that bond for my redress; that said Warren has said he intended, or wanted to, ship some of said stock of goods on the first vessel for New York; that I verily believe said Warren intends to remove said stock of goods out of the limits of this State, or that he intends to sell the said goods and carry the proceeds to the State and city of New York, without my consent; that the said Warren has caused the sheriff of Galveston county to take possession of said goods, and all papers, &c., belonging to me, under the name of S. Newell & Co.; that I am advised, and verily believe, the actings and doings of said Warren are contrary to law, and injurious to my just rights, and I pray that said *said* Warren may be divested by your honors of all authority, or pretended authority, he may have, or pretend to have, derived from any order of any judge touching or concerning said goods.

STEWART NEWELL.

Subscribed and sworn to in open court, June 12th, 1848.

J. W. MOORE,
Clerk D. C., G. C.

Isaac D. Knight's affidavit, filed June 12th, 1848.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL.

Suit in Galveston district court, returnable to the fall term, 1848.

Personally appeared before me, Dr. Isaac D. Knight, who, being duly sworn, saith, that he heard William E. Warren, speaking of the goods mentioned and referred to in the petition in said case, say "what can Mr. Newell do, I will take the goods to New York, and leave him to fight it out with the securities."

ISAAC D. KNIGHT.

Sworn to and subscribed before me this 12th June, 1848, in open court.

J. W. MOORE,
Clerk D. C., G. C.

Motion, filed June 12th, 1848.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL.

Suit instituted in Galveston district court, returnable to the fall term, 1848.

The defendant, Stewart Newell, representing to the honorable Joseph C. Megginson, judge of the first judicial district, presiding in and

for said county, that the plaintiffs, on an ex parte hearing, procured an injunction and an order, directing the sheriff to seize and take into his custody all the effects of "Stewart Newell & Co.," whether goods, wares, &c., books of account, notes, debts, papers, &c., of every description, and the same when taken so in possession, to deliver to one William Warren, who by said order was appointed receiver for said firm, with full powers to liquidate the business of said firm by disposing of all the stock in trade, and collecting all outstanding debts due thereto, applying the proceeds to the payment of all the firm liabilities; this defendant represents that the exparte proceedings are in violation of his rights, and contrary to law; he further represents that the said William Warren is not a citizen of Texas, and that he believes it is the intention of the said Warren to take possession of all the effects of the said firm, and to remove them beyond the jurisdiction of the court, to close the business of the firm, without keeping up and conducting the business of the firm, and settling the affairs of the firm within the jurisdiction and under the control of the court. Wherefore, as the whole matter is within the jurisdiction and control of the court, the said Newell moves the court, that the injunction issued may be set aside as improperly granted ex parte, this defendant being, at the time of granting and serving the injunction, a resident citizen of the county of Galveston, and actually present, so that a notice could have been served upon him, when and where he could have shown cause against the granting of said injunction.

That the appointment of William Warren as receiver be revoked and set aside as irregular, erroneous, and without the authority of law.

That should the appointment of a receiver be deemed authorized, under the petition of the plaintiffs, the [said] Newell represents that the said William Warren is the agent of the plaintiffs, and some of the creditors of the firm, and a non resident citizen of the State, and that he has stated his intention of removing the effects of the firm beyond the jurisdiction of the court, so that the said Warren is not a suitable person to be appointed receiver. The defendant then suggests that some other and suitable person be appointed receiver, to take into his possession and conduct the business of the firm for the mutual benefit of all the parties in interest, until a final hearing can be had on the merits, and a decree be rendered in the premises.

The said Stewart Newell asks leave to refer to the proceedings in the cause, and the affidavits filed with this motion, as often as may be necessary in support of this his motion.

NEWELL,
FRANKLIN,
Attorney for Newell.

Injunction dissolved.

Spring term, 1848, June 28th.

On motion of the defendants, by his counsel, the court, after mature deliberation, doth order, that the injunction awarded the plaintiffs in

this cause be dissolved. Leave is granted to defendant to answer. Also, on motion of the defendant, it is ordered, that the order, heretofore made, appointing W. E. Warren receiver in this cause be set aside and annulled. It is further ordered, that the sheriff retain possession of the property, goods, &c., of the firm of Stewart Newell & Co., seized by a former order of this court, until further ordered.

Answer, filed July 3, 1848.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL.

Suit in the district court of Galveston county, returned to fall term, 1848.

And now comes the defendant, saving and reserving all manner of exceptions to the many errors and insufficiencies in the petition of the plaintiffs, says that the plaintiffs' petition and the allegations therein contained, are insufficient to entitle him to have and recover any thing of and from this defendant, to have and maintain their suit against this defendant, and insufficient to authorize the process issued, or to give the relief sought by plaintiffs; wherefore he prays judgment of the court whether plaintiffs shall further have and maintain their suit against this defendant.

SWETT & FRANKLIN,
Attys. for deft.

The defendant, Stewart Newell, saving and reserving to himself all manner of exceptions to the errors and illegalities in their proceedings, and for answer to such matters as he is advised it is material for him to answer, answers and says:

That he admits that he entered into the contract or agreement of co-partnership with the plaintiffs, as set forth in the petition of plaintiffs; this defendant denies that at the time of this negotiation between the plaintiffs and this defendant for the formation of the co-partnership, or at any other time, falsely and fraudulently held himself out to the plaintiff as a man of ready means and capital, and well able to advance five thousand dollars, or any sum whatever. This defendant says that it was well known to the plaintiffs that it was uncertain as to the time when this defendant would be able to put in his part of the capital stock, and the resources from which this defendant's proportion was to be raised; and that the plaintiffs and this defendant did really and truly believe that the money expected from the defendant would be on hand when required, and the funds pass through the hands of the plaintiff, Wm. Tyack, in ample time to comply with the articles of co-partnership; and this defendant says that he did represent to the parties that his acquaintance with planters and merchants in eastern Texas was of long standing, and that he possessed some influence in

that quarter arising from his residence at the Sabine Pass and his visits among them; and that aided with a large stock of goods, and the capital of Tyack and Murray, he could control a reasonable portion of the produce of eastern Texas by way of the Sabine and Neuces rivers; the intention being at the time to establish a store at the Sabine Pass. This defendant denies that the co-partnership was entered into with this defendant in consequence of representations made by this defendant fraudulently, as stated by the plaintiffs, but says that the said parties plaintiff were truly advised of this defendant's abilities and circumstances, and from what source his five thousand dollars were to be realized, and with a full knowledge they entered into the articles of co-partnership.

This defendant denies that the said Wm. Tyack did advance the sum of about five thousand dollars as stated in petition. This defendant admits that the said William Tyack did advance a portion of the five thousand dollars, his part of the capital stock to be advanced. This defendant cannot say how much with certainty. This defendant has been informed by Lindley Murray, one of the plaintiffs, and who was book-keeper for the house of Wm. Tyack & Co., in New York, on or about the twenty-ninth of May, 1848, that he had been looking over the accounts, and as near as he could make it out the said William Tyack had not advanced over twenty-three hundred dollars. This defendant says, that the entire amount of goods purchased by and for and on account of Stewart Newell & Company, so far as this defendant knows or believes, or can ascertain from invoices, amounted only to the sum of sixteen thousand three hundred and twelve dollars and thirty cents. That of this sum from the funds advanced by Wm. Tyack and remitted by this defendant and paid by him, the sum of twenty-nine hundred and two dollars and $\frac{1}{100}$ have been paid of the debts incurred on account of the purchase made, leaving a balance due for purchases, to wit, of about the sum of thirteen thousand one hundred and seventy-five dollars and forty-one cents, less two hundred and thirty-four dollars $\frac{75}{100}$, paid by this defendant for goods in New Orleans. This defendant says, from what he is advised, and believes from the information of others, (being restrained by the order of this court from having the custody, control, or inspection of, the books, and the possession of the goods,) that there is now on hand in the store something over eleven thousand dollars' worth of the goods purchased at the invoice prices. This defendant admits that the plaintiff, Lindley Murray, has never advanced any capital out of his private [fund] to be put in the co-partnership concern. This defendant denies that all the said purchases of goods, except those paid for with the cash advanced by Wm. Tyack, were purchased solely and exclusively on the credit of the said co-partnership; this defendant having purchased goods included in the said sum of sixteen thousand three hundred and twelve dollars and thirty cents, and paid for them out of his private funds. This defendant admits the goods were shipped to Galveston, and that the house of Stew-

art Newell & Co. was opened about the 1st of January, 1848, as alleged. Since opening said house this defendant has sold and disposed [of] something like five thousand dollars of the goods purchased. That he cannot say at what advance or at what loss, on the original invoices, not having possession of the books. But he says that the amount of produce shipped to the house in New York, the sum received by Wm. Tyack for damage on goods insured, expenses incurred in taking care of the goods, storage, drayage, house rent and clerk hire, paid by this defendant, amount to the sum of about twenty-six or seven hundred dollars, over and above said amount of twenty-nine hundred and two dollars $\frac{14}{100}$; that there is a considerable amount of book debts due the firm, the amount not recollected by this defendant.

This defendant denies that he ever represented to the plaintiffs that he had actually laid out and expended in the city of New Orleans the amount of five thousand dollars agreed by him to be advanced as capital in the said co-partnership agreement. That if any such statement was made to any person, it was made by the said Wm. Tyack without the knowledge of this defendant, and without information derived from him.

This defendant knows nothing of *a* frequent requests for a monthly statement, or that the plaintiffs urged and solicited this defendant to give plaintiffs the statement of the concerns or business of the said house. This defendant denies that he falsely and fraudulently pretended that he was unable to sell said goods, or any other false or fraudulent representations, or that he has sold or disposed of about one-half of the said goods, and appropriated most of the avails to his own private benefit.

This defendant denies that he held out and pretended to the plaintiffs that he had purchased some three hundred and twenty bales of cotton. This defendant says that he did contract for the agency of a steamboat then building on the Trinity by one McDonald; that McDonald told this defendant he would control from three to five hundred bales of cotton, which would be shipped to Galveston; and the said McDonald informed this defendant that most of the cotton would be shipped to Galveston; and the said McDonald informed this defendant that most of the cotton would be sold for goods, and promised this defendant, if defendant would advance some goods to enable the said McDonald to get his boat finished, he would consign the boat and her cargo to said firm of Stewart Newell & Co. That this defendant did advance the goods, (which have since been paid for.) But that the death of the said McDonald, before he could complete the building of his boat, prevented the accomplishment of the enterprise. That the plaintiffs, Tyack and Murray, were advised of these matters.

This defendant denies that his con*tain*ing in possession, controlling said goods, and managing and conducting the affairs of the said firm as he has hitherto done, will wholly ruin and impoverish petitioners, or do great injustice to the creditors of the said firm. This defendant has been informed, and believes the fact to be, and he so expressly charges, that the said Tyack & Murray have been discharged from liability on the debts contracted for purchase of goods by the said firm of Stewart

1490.

Newell & Co., by all or greater portion of the creditors from whom the goods were purchased, so that they are no longer liable thereafter, and neither in law or equity have any right to the exclusive possession and control of said goods.

This defendant denies that he has placed beyond power of petitioners to obtain from the said goods or the proceeds of said goods more than one half of their cost. This defendant alleges, that as near as he can state, without examining the invoices, the original stock of the company in goods purchased there was about sixteen thousand three hundred and twelve dollars; that, as he is advised and believes, there is over eleven thousand dollars of the stock on hand, at invoice prices, besides due the firm; the aggregate value of which this defendant believes will be sufficient, properly managed by him, to enable him to pay off and discharge all the outstanding liabilities of the firm, as well as to reimburse the several partners for all advances.

This defendant further alleges and represents the fact to be, that the present suit is instituted against this defendant in the name of the plaintiffs, in consequence of a fraudulent combination of the plaintiffs and some of the creditors of the firm, (who, this defendant, with a view to deprive this defendant of the possession of said goods, and thereby leave him to the mercy of the creditors of the firm, alternately to his ruin and injury.)

Whereas he prays that the injunction granted may be dissolved, the order of seizure be set aside, the appointment of a receiver be revoked, and the bill be dismissed, and the defendant recover his costs and damages.

STEWART NEWELL.

STATE OF TEXAS, *Galveston county.*

Personally appeared before me, the undersigned, Stewart Newell, the defendant, who being duly sworn, saith: That the facts set forth in the foregoing answer of his own knowledge are true; so far as they depend on the knowledge or information of others he believes to be true.

STEWART NEWELL.

Sworn and subscribed this 28th day of June, 1848, before me, in open court.

J. W. MOORE, *Clerk D. C., G. C.*

We certify, that in our opinion the foregoing answer is well founded in law and fact.

J. A. SWETT,
B. C. FRANKLIN,
Counsel for deft.

Opinion of the judge, filed July 8th, 1848.

In the Galveston circuit court, hon. J. C. Megginson, judge.

TYACK and Murray, comp'ts,
vs.
Stewart Newell.

On a motion to dissolve the injunction, revoke the orders appointing a receiver, and for a writ of seizure, and to order the restoration of the property to the defendant.

On petition and answer.

This is a petition (or bill) brought by the plaintiffs against the defendant, setting out articles of co-partnership entered into by plaintiffs and defendant on the 25th of September, 1847, which shows, amongst other things, (not material to this motion,) that they were severally to contribute $5,000 in ninety days, as the capital stock of the concern; to be augmented, if necessary, by each, according to his means; that it was to be a commission, general, and an auction business, to continue for five years; that in consideration of the expenses and labor "before that time incurred by S. Newell in paving the way for the contemplated business," he was to have one-fourth of the profits first, and an equal division of the remainder with the partners; that "the plaintiffs were to have charge of the business in New York, and the defendant to have charge of the business in all its departments in the city of Galveston;" that the branches of the concern in New York and in Galveston were, respectively, to transmit at least once a month an account current of the transactions of the two branches; that the respective partners should not endorse, become security, or loan money, without consultation and consent of all parties; that not more than $1,500 for the term of one year should be drawn out by either for his personal expenses, and the other articles contained a clause to refer disputes.

The plaintiffs allege that the defendant induced them to enter into this co-partnership by false and fraudulent representations as to his resources and influence in Texas, and ability to procure business; which, as well as all fraud, is denied by the answer, and averred that the plaintiffs were advised truly of his resources, &c.

It is further alleged that the plaintiff, Tyack, advanced about $5,000, and that the partners purchased on credit to the amount of $15,000; and states the aggregate value of the goods purchased and forwarded to defendant, to be about $19,000. The defendant denies this allegation as laid, and avers that the plaintiff, Murray, informed him that, upon an examination of the books of the New York branch, Tyack's advance in money appeared to be less than $2,300; denies that the aggregate value of the goods exceeded $16,312 $\frac{3}{100}$; avers that of this $2,902 $\frac{14}{100}$ was cash made

up of Tyack's advance and defendant's remittances, and $234 75 laid out by the defendant for goods in New Orleans, leaving a balance of (about) $13,000. That he is informed and believes (but the books, &c., having been taken out of his possession by order of the court, cannot state with certainty) that there is now on hand goods to the value, at invoice prices, of over $11,000.

The bill and answer both show that the plaintiff, Murray, has not advanced any thing.

The plaintiff, Tyack, alleges that he alone advanced money. This the defendant denies; admits that defendant Murray advanced nothing, but avers that he (defendant) paid out of his private funds towards the said $16,000 worth of goods $312 30, besides remittances and expenses of the house, &c. Admits the goods were received, and the house of S. Newell & Co. was opened here, 1 January, 1848, and that he had since sold and disposed of goods to the amount of about $5,000; cannot say the exact sum for want of the books, &c., or at what advance or loss.

That the amount received by plaintiff, Tyack, as damage on goods insured, expenses incurred by defendant in taking care of the goods, storage, drayage, house rent, and clerk hire, paid out of his private funds, amounts to about $2,600 to $2,700, and that there is a considerable amount of book debts due the concern, the amount not certainly stated for want of the books, which, with the goods on had, he believes to be sufficient to meet all the liabilities of the branch here.

Plaintiffs admit a remittance of only $750.

Plaintiffs allege, and defendant denies, that he represented he had laid out $5,000 in New Orleans.

Plaintiffs allege, and defendant denies, that he made false representations about the business and condition *in* the house here to the house in New York, and that he had sold about half the goods, and applied the proceeds to his own use.

It is alleged and denied that defendant represented he had purchased 320 bales of cotton, and gives his explanation of what were his representations to the plaintiffs at the time, to this effect, that he expected the consignment, commission, and on cotton, to that, or perhaps a greater amount.

Plaintiffs allege that they will be ruined if defendant be allowed further to control and conduct the business. This is denied by the answer of defendant, who avers, on information and belief, that the plaintiffs have been discharged by the creditors of their liability for the goods.

The other allegations are denied, except those charging defendant with selling goods to a large amount to his individual creditors, names and amount not known, and thus misapplying the proceeds of partnership means to his own use.

This allegation is not directly met by the answer, or at all, except inferentially in his *in his* general denial of all fraud, and of his selling near half the goods and appropriating the avails to his own use.

The plaintiffs pray for an injunction; the appointment of a receiver;

for a dissolution of the partnership; for an account, and for general relief.

The jurat in support of the allegations of the petition is made by W. E. Warren as agent of the plaintiffs, who swears only "to the best of his knowledge, information, and belief."

Upon this showing ex parte, a temporary receiver was appointed, and an injunction and a writ of seizure granted, subject to the further order of the court.

The injunction having been dissolved before, on the coming in of the answer, the motion is now further considered on the petition (or bill and answer.

It has been fully argued with marked zeal and ability by the counsel on all sides, and as the decision of this court might, temporarily, affect the credit or interest of our mercantile community, a patient and thorough examination of the subject has been given to it; the result of which is written and filed for inspection, and, if desired, for publication.

It is true, as has been urged and well sustained by authority and argument, the appointment of a receiver rests in the discretion of the court. This discretion, however, is by no means unlimited or unguided; on the contrary, the character of cases in which a court can or cannot make the appointment is well settled and defined, and they occur more frequently, perhaps in contests between co-partners, where a dissolution of the firm has been decreed or is sought, than in any other class of cases.

Admitting the power of the court, (which seems to be clearly included in the general and comprehensive jurisdiction given by our Constitution and laws to the district courts,) and that its discretion is well guided and controlled by authority as to the character of causes in which the appointment may be made, there yet remains a more difficult point of discretion, viz., whether or not the case at bar exhibits such equities as entitles the complainants to this remedy; and whether, if they do or may exist, they are presented with sufficient clearness and certainty to authorize the exercise of such discretion?

In solving these questions, the decisions of courts afford by no means unerring and certain guides. They may afford assistance to the court, but they are so various, variant, and often apparently contradictory, that the court is compelled to fall back upon the general well defined and uncontradicted principles applicable to the case.

The English chancellors, especially Lords Kenyon and Eldon, regarded such an appointment as an extraordinary, if not extreme remedy, and exercised the power with caution and reluctance, particularly as between partners, mercantile or otherwise. In such cases, the good will, as it is called, which terms include the credit, the establishment in business, and expense and trouble incurred in fitting it up, is always involved and cannot easily be estimated.

At first this power was seldom if ever exercised by the English chancellors in cases of partnership until dissolution had been decreed

on final hearing. This discretion was afterwards slowly and step by step extended; first, to cases on bill and answer; when in a few cases, by some less scrupulous chancellors, whose pride of place and lust of power and its exercise, induced them to assume and exert it in cases of (supposed) necessity, and to prevent irreparable mischief; and upon ex parte showing, appointed temporary, and afterwards permanent receivers, in anticipation of a dissolution of the partnership, which upon final trial might or might not be decreed.

Before proceeding to lay down some of the established principles which will control this court, let it be clearly understood, that the laws of Texas open her courts to non-residents as freely as to our own citizens, and mete out to them the same measures of justice, no more no less; and this is the uniform practice of our courts.

Our laws have provided specific and effectual remedies to enforce almost all rights which parties may seek in our courts. It is, therefore, with the more caution and reserve that they ought or will grant the remedy here sought, especially in cases of partnership, in which the good will of the trade or concern is often of more value than all the property belonging to it. The equitable grounds and necessity of resorting to this remedy, to prevent irreparable loss or injury to the party invoking it, must not only clearly exist, but they must also be properly presented, and reasonably sustained by a proper affidavit, at least to justify the court in granting the prayer.

In this case, I cannot now look beyond the petition and answer. The plaintiffs might have supported their petition with affidavits, on their ex parte presentation of their case to the judge in chambers, or on this motion, before the answer was filed. The defendant had a right, on filing of the petition, immediately to answer, which he has done, and now again presses his motion; here, then, is an issue to be decided, not by ex parte affidavits, but by regularly taken and examined testimony; the trial of which issue is, by law, suspended until the next term of the court, to which the process is made returnable.

Considering, then, the cause on petition and answer, do these present such a case as will make it the duty or authorize the court to appoint a receiver, or retain the property, goods, &c., and withhold them from the hands and management to which they were committed in pursuance of the contract of co-partnership?

According to a well known chancery maxim, "he who would have equity must do equity."

The plaintiffs complain that the defendant failed to pay up his quota of $5,000, (as if, with his books before him, he did not and was not bound to know the exact sum,) which sum is reduced, (according to the answer,) by information from his co-plaintiff, to less than $2,300; whilst the petition and answer, taken together, show that the defendant has paid towards the concern about $1,000 more than both plaintiffs have paid.

The plaintiffs complain of another breach of contract by defendant, his failure to transmit a monthly account current, whilst they do not

even allege that they have complied with their reciprocal obligation at any time; nor do they now show, or attempt to show, the condition or liabilities of their branch of the concern, or that the defendant is not or may not be bound, by their acts, in an amount greater than the value of all the goods he ever had. The plaintiffs had full power to bind the defendant in the name of their branch of the firm, he being as much a part in that as in this branch.

The plaintiffs pray that defendant shall be made to account, without showing the condition of this branch of the concern. Is this doing equity?

In support of the position, the plaintiffs' agents, although he says he believes he knows in this regard of the plaintiffs' concerns, that they know themselves, does not swear positively and directly to a single fact alleged in the petition, upon which relief is sought or could be granted. The whole jurat is uncertain, resting only, as he says, on "the best of his knowledge, information and belief." It is true, he says, he has read the foregoing petition, and knows the contents thereof; not that he knew the contents thereof to be true.

Such is the imperfect and unsatisfactory exhibition of the mutual equities of the plaintiffs and defendant, which it was incumbent upon the plaintiffs to show, to entitle them to extraordinary relief; sustained only by the unaided and equally unsatisfactory affidavit of their agent, upon which the court is most emphatically urged by the plaintiffs to take the business of Stewart Newell & Co. out of the hands to which, by their contract and full sanction, they had deliberately committed it for *for* five years. To destroy the good will of an establishment, to establish which the plaintiffs admitted, in their contract, the defendant had incurred expense and labor sufficient to entitle him to one-fourth of the profits; to break up the house and destroy its credit, and that of the defendant; and this without even an allegation showing any thing of the condition and circumstances of the branch of the concern in their care and keeping, or any other allegation concerning it, which does not tend to furnish evidence of their own non-compliance with the contract here set up by themselves.

The plaintiffs may have a right to the relief here sought; this petition and answer do not show it. The motion of defendant is therefore sustained, the appointment of a receiver revoked and annulled, and the sheriff is ordered to restore the property, goods, &c., taken by the writ of seizure, to the defendant.

Spring term, July 10th, 1848.

Motion to set aside order granting injunction and appointing receiver as irregularly and illegally issued.

This motion coming on again to be heard, upon the filing of the answer of the defendant, after argument of counsel, it is ordered by the court the appointment of a receiver be revoked and set aside; and that the sheriff return to the defendant the goods, wares, and merchan-

dise, books, accounts, notes, and all other things taken out of the possession of the defendant, in pursuance of a writ of seizure heretofore ordered by the court, and that he make due return of said writ.

Spring term, 1848—July 11th, 1848.

This day came the plaintiffs, by their attorneys, and dismissed this suit; thereupon, it is ordered and adjudged that the suit be, and the same is hereby, dismissed; and that the defendant recover of and from the plaintiff, and Henry H. Williams and Charles W. Adams, securities in injunction bond, all the costs about this suit expended.

THE STATE OF TEXAS,
County of Galveston.

I, James W. Moore, clerk of the district court in and for said county, certify, that the foregoing transcript contains a true copy of the proceedings as therein set forth, in said suit of William Tyack and Lindley Murray vs. Stewart Newell.

In witness whereof, I hereunto set my hand, and affix the [SEAL.] seal of said court, this fourteenth day of November, A. D. 1849.

J. W. MOORE, *Clerk.*

Read in evidence at the hearing by complainants.

UNITED STATES DISTRICT COURT,
District of Texas.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss.

In equity, taken on behalf of complainants.

Personally came, before me, William E. Warren, who, being by me duly sworn, says: I am the agent and attorney in fact of the aforenamed complainants, and also agent and attorney in fact of all the creditors of the firms of Stewart Newell & Co. and William Tyack & Co., who are named and set forth in the second amended bill of said complainants, except of J. & R. Bruce, and as such agent I arrived in Galveston, on the morning of the 30th May last, for the purpose of investigating the affairs and condition of Stewart Newell & Co.

Very soon after my arrival in this city, on said 30th May last, I called at the store of said Newell & Co., and inquired if Mr. Newell was in, when Mr. Newell stated to me that he was the man. I told him who I was, and he said that he had been expecting me for some time, his partner, Captain Tyack, having written to him that I was coming, and he had been engaged in making out a statement of their affairs to show me, but had not yet completed it. I noticed that several

boxes about the upper room, and some on the lower floor, were packed full of goods, and on inquiring about them, he, Newell, told me they contained woollen goods, and that he had just packed them up to keep them from moth. I inquired what amount of goods had been sold, and he replied about $5,000, including $2,000 sold to Edgar; that he had sold nothing on credit except a small bill to a steamboat man, and a few persons about town; that the amount due from the last mentioned persons was some five or six hundred *persons*, he supposed. The stock on hand he estimated at between $12,000 and $13,000 I left Mr. Newell at two o'clock, p. m., and after dinner called again at his store, when I first saw Mr. Alexander Edgar, who seemed to be engaged in conversation with Mr. Newell, and I remained there but a short time.

On Wednesday morning, 31st May, I called again at Mr. Newell's store, and inquired if the statement he had promised me was ready. He told me that owing to the illness of his wife the night before he had not finished it. A long conversation then ensued respecting Mr. Edgar's claim to the land upon which the city of Galveston is situated. Mr. Edgar was present. Mr. Newell gave me a pamphlet respecting Edgar's title to said land.

On Thursday morning, 1st June, I called upon Mr. Newell, and he gave me the statement which is hereto annexed, remarking, as he gave it to me, that it did not contain an account of the goods which he had sold at auction, and which amounted to two thousand dollars or over.

After having ascertained that the statement contained in Newell's letter to Tyack & Co., of 15th of April last, in regard to the amount of goods on hand was untrue, and that, instead of having all or nearly all the goods on hand, he had disposed of about one half of the stock, I lost all confidence in Mr. Newell, and thought it advisable to get what goods were left on almost any terms. I offered him, on behalf of Tyack and Murray, to take the goods on hand, and assume the payment of the liabilities of the firm for the amount of the stock, as far as the same would go, at the cost in Galveston. This he refused. Before making this offer I had said to Mr. Newell that if he would put in his share of the capital stock, ($5,000,) or secure the same, to be paid in a reasonable time, I would agree to give him an extension, provided the affairs of the concern, after an examination, should prove to be as he has represented them to me; but he told me that he could not raise the money, and did not know as he could secure the amount.

After he, Mr. Newell, had declined the offer first above mentioned, I made him an offer on behalf of the creditors of the concern to take the goods on hand, so far as they would go at their cost in Galveston, and receipt to Stewart Newell & Co. for the same. This he also declined. I then asked him if he would buy out Tyack & Murray's interest in the concern; he said he would; and I asked him if he could secure the payment in any way; he replied that he could by a mortgage or lien on the stock; he said he had friends in Philadelphia who, he thought, would assist him, and, I think, mentioned to me that he

had written to some person in Philadelphia, or some person in Philadelphia had written to him, on the subject of a business connexion here, and he, Newell, expressed confidence that his friend or friends in Philadelphia would aid him. He also said that he had property of various kinds, with which he could secure the payment of the amount, but on inquiry I learned that the only real estate standing in his name was the place whe[re] he resides and the lots adjoining, which he bought from the Galveston City Company, but had never paid for it; also, that there was a claim on the property in favor of a Mr. Geddes, of New Orleans, for one thousand dollars or over, besides various other claims against him.

As I have before stated, a large proportion of the dry goods in the store were boxed and baled up before my arrival in this city; and I had no doubt from his manner, and from what I learnt from various persons about his character, that he would give me the slip in some way if made aware of my intention to institute legal proceedings against him, in case we should not settle amicably; and after taking counsel, I requested the necessary papers to be got in readiness before I mentioned to Newell that I should take that course if he refused to settle with me. These papers were nearly ready on the night of the third of June, and I was strongly advised to proceed that night, but still hoping to effect an amicable arrangement, I delayed further action until the following Monday morning, at which time I went down to the store of Stewart Newell & Co. with Mr. F. H. Merriman, who I requested to accompany me for the purpose of drawing up any agreement which Mr. Newell and myself might make. On arriving at the store we found Mr. Newell was out, but a short time after came in. I was then on the lower floor of the store, and as Mr. Newell came in I requested him to walk to the back part of the store with me, which he did. I then stated to him, that from what I had seen of the concern, and what I had learned of the prospects of business for the future, I should not feel justified in agreeing myself, or in recommending the creditors to agree, to give him an extension, as he had requested; and asked if he, Newell, did not think it would be better for all parties to discontinue the business, and whether we could not agree on some terms of settlement. He replied, he had made no other calculation than to continue the business; that he supposed he would not be able to buy any more goods from the same houses in New York, but he could get what he wanted elsewhere or of other houses, and he was not disposed to give up for the present, or words to that effect.

I then stated it was very certain from his own showing that the concern was losing money, and I saw nothing to justify the expectation that they could make any thing by continuing the business, and I thought it would be better for all parties to have it closed; that as the agent of the creditors of the concern, I would take the goods at cost, so the concern would sustain no loss on them. Mr. Newell said he had no other business and nothing else to do, and he could not think of giving it up. We then went up stairs and in the counting-room where

Mr. Merriman was sitting. I told Mr. Newell that I had requested Mr. Merriman to come down with me for the purpose before stated, and expressed a hope that we should be able to effect an amicable settlement. I then handed Tyack and Murray's power of attorney to me to Mr. Newell, with the request to him to read it. I remarked to Mr. Newell, after the power of attorney had been read, that he would see my power was sufficiently full; and considerable conversation ensued respecting the business of the concern and its prospects, in which Mr. Merriman, Mr. Newell, and myself participated. After a while I went out of the room for a short time, leaving Mr. Newell and Mr. Merriman there, and when I returned I told Mr. Newell, in presence of Mr. Merriman, that the concern would have to be closed in some way, and repeated the offers which I had previously made to him, Newell, as above stated. Mr. Merriman remarked that I had made Mr. Newell very liberal offers, and asked Newell if he did not think so, and at the same time told him that he better settle with me. Mr. Newell replied that he should not do so, and stated that if Murray had only put in his capital all would have gone on smoothly; and said much more about Murray's not having put in his capital, as he, Newell, had previously done when talking with me alone. I then asked him why he, Newell, had not put in his capital; and stated that, by the agreement he was as much bound to put in his, Newell's, capital, as Mr. Murray was bound to put in his, and that Captain Tyack supposed that he had put in his, and invested the same in the purchase of groceries in New Orleans; and he replied that the reason he had not done so was, that the business had not needed it. During this conversation Mr. Newell stated and admitted, as he had previously done to me alone, that Capt. Tyack had advanced his five *five* thousand dollars capital. I finally told Mr. Newell that I was very desirous to have the matter settled amicably, and rather than have any difficulty I would make him another and still more liberal proposition; and then offered, on behalf of his partners, to take the effects on hand, goods, and debts, and assume the payment of all the liabilities of the concern, and that the creditors would join in a release to him, which he refused to accept. I then offered on behalf of his partners to take the goods only, and give him a release as above, he to pay any debts which he had contracted in the name of the firm, besides those in New York, and his partners to pay the said creditors in New York. This he also refused; when I again expressed my regret on account of old Capt. Tyack, and asked him if he would not make me a proposition, or name some terms upon which he would settle; and he stated in reply that he would not settle with me in any way, and that he was determined not to give up the concern.

Mr. Merriman then stated that he must go up to court, as he had a case coming on that morning. That he did not see that he could do us any good, as we were not likely to settle our matters. As Mr. Merriman went out, I requested him to send the sheriff down, and he told me he would do so. Before the sheriff came in, I again appealed to Mr. Newell to settle with me in some way, and stated that if he would

do so, I would do anything I could to prevent any publicity being given to the transaction; but all my endeavors to settle were in vain.

The sheriff appeared soon after, and before giving him the papers which the clerk of the first judicial court of Galveston county had handed me, I made another appeal to Mr. Newell in presence of the sheriff, and I believe I then repeated the offers I had previously made to Mr. Newell for a settlement, and begged him not to subject the parties interested to the expense of legal proceedings in the case; but he still persisted in his determination not to give up or settle with me in any way; and I finally handed the papers to the sheriff, and requested him to do his duty. The sheriff, after serving the papers on Mr. Newell, stated that he would have to take an inventory of the goods, &c., but I requested him not to commence then, as I hoped Mr. Newell would think better of my propositions, and that we should yet agree upon some terms of settlement; I also requested the sheriff and his deputies not to mention to any one what had been done, as I was desirous to avoid doing any injury to Mr. Newell's reputation, and they promised me they would not. Mr. Newell not manifesting any disposition to settle with me, the sheriff next day commenced taking the inventory. I have since my arrival here told Mr. Newell, and also told his counsel, Messrs. Swett and Franklin, that I was not only willing, but very anxious, to settle with Mr. Newell; but Mr. Newell has never made me any proposition whatever, except through Mr. Swett. On the 15th June Mr. Swett told me, that if I would allow Newell a couple of thousand dollars worth of the goods, and five hundred dollars worth of the accounts, and give him a full discharge from his creditors and partners, that he would settle. This offer I could not accept. On the evening of the 20th of June, Mr. Swett again called upon me, and stated, if I would allow Newell to select five hundred dollars of the notes and accounts; and $1,100 worth of the goods, making $1,600, and give him, Newell, a full discharge from both his creditors and partners, he would settle; but, as I was then advised, I did not feel disposed to accept this offer. On being informed, however, of the probable expense which would attend the sale of the goods by a receiver, I thought it advisable, and did propose, through Mr. Merriman, to pay Mr. Newell the sum of five hundred dollars in cash, and give him all the accounts and notes, and give him a full discharge as above stated; but this was not accepted. I afterwards made various other propositions, before the commencement of the present suit, and one of which was to pay to him, Newell, one thousand dollars in cash, and $400 worth of the accounts, and give him a full release as above, but he to pay any liabilities of the firm besides those represented by me, or to the parties of whom the goods were purchased in New York; but this, as well as all previous offers for an arrangement, were rejected. On the evening of the ninth of July, I addressed a note to Mr. Newell, asking him if he would not in some way settle with me; to which letter I have received no reply, although I know that said note was received by Mr. Newell, as I was afterwards so informed by Mr. Swett.

Question by sol. for plaintiffs. Are merchants going from this place and Houston to New York for the purpose of purchasing goods?

Answer. Several have gone already.

Question by sol. for plaintiffs. What is the general description of merchandise in the store of Stewart Newell & Co?

Answer. The stock is a general assorted one, chiefly of domestic manufactures, dry goods, hardware, boots, shoes, clothing, and iron. I think much the largest proportion of the clothing was cotton and linen; I think the value of the linen and cotton garments would exceed very much in value the woollen goods.

Question by sol. for plaintiffs. What is the general? Were or did the goods appear to have been well taken care of?

Answer. I think they had been well cared for; I saw nothing to the contrary.

Question. State what conversation you had with Mr. Sauters about the rent of the store.

Answer. I had a conversation with Mr. Sauters some time after the goods were seized by the sheriff, about the rent of the store, and asked him if the rent had been paid; he hold me that it had been, and he believed he owed the concern of Newell & Co. a small amount. I then asked him what rent he would charge for the store if the goods should remain there; and at the same time I told him that, if we could agree upon terms, that I or the sheriff would permit the goods to remain there. He said that his agreement with Mr. Newell was, that he should be paid forty dollars per month; that the rent had been higher, but that it was at this time at forty dollars per month, and that he would be entitled to rent at that rate until the end of the month of June, but after the first of July he would say twenty-five dollars up till the first of October or November, I cannot say which, or at that rate, so long as I should require the store. I told him that I would see about it; and after making inquiries of various persons about town about rents, I concluded it would be best to have the goods remain there, and so told Mr. Sauters, and that I would keep the store on these terms; to which he assented, and remarked he considered that to be the understanding.

Cross examined.

Question by solicitor for plaintiffs. Did you have one or more interviews with Mr. Swett, as attorney for Newell, in relation to the business which you represented yourself to have come upon?

Answer. I did.

Question. Was it understood that any conversation had at these interviews, or either of them, concerning an arrangement of the matter with Newell, was to be strictly confidential, and not to be made use of in any way?

Answer. Such was not my understanding.

Question. Was it not expressly agreed, in the office of Mr. Swett, that any conversation that transpired, or any proposition that was made,

was to be strictly confidential, and not to be used or spoken of by either party without the consent of the other?

Answer. My present recollection is, that some understanding or conversation to that effect was had at the time of my interview with Mr. Swett, in company with Mr. Newell; but I did not understand that the agreement related to any proposition or conversation that might take place afterwards.

Question. Was the same understanding referred to on the evening that you with Mr. Swett rode out to Mr. James's, either during the ride, before, or afterwards?

Answer. I have no recollection of any such reference at the time; and I never supposed that the understanding referred to as having been made at the time at Mr. Swett's office, was to apply to any conversation or proposition that might be made or take place after that time.

Question. Was not the substance of every conversation had between you and Mr. Swett, in relation to the matter spoken of at Mr. Swett's office, above referred to, considered by both yourself and Mr. Swett of a confidential nature?

Answer. I never so considered it; do not know how Mr. Swett considered it.

Question. Did you ever express to Mr. Swett that you might be acting imprudently in discoursing with Mr. Swett, in the absence of any third party, about any proposition for the adjustment of the matter with Newell?

Answer. I recollect that, after I had caused the goods to be seized at the store of Newell & Co., Mr. Newell desired me to go with him to see Mr. Swett. I declined doing so, and told Mr. Newell that if he wished to take legal advice he could so, and that then he and I could arrange matters between ourselves; that I did not wish to see or consult with his lawyer about what I was to do. I, however, went finally with Mr. Newell to Mr. Swett's office, and on arriving there I think I mentioned to Mr. Swett that Newell had requested me before to come there, but I had declined doing so; that I had, however, come, and was willing to hear any proposition they or either of them had to make; that I did not care about talking much about the matter in presence of Mr. Swett or any other third person. I do not recollect having expressed to Mr. Swett that I might be acting imprudently in conversing with him about a proposition for an adjustment of the matter with Newell in the absence of third parties; I may have done so.

Question. Do you not recollect that Mr. Swett told you that you were just as competent a witness as to what transpired at your interviews with him as he, Swett, was; that you were the agent and attorney of some of the parties, and Mr. Swett was the attorney of Newell?

Answer. I do not recollect that Mr. Swett in substance made such a remark to me in the evening of my first interview with him at his office, and also that any admissions or statements made by me would not bind the parties in New York.

Question. Did not Mr. Swett, at one or more of the interviews above

referred to, express to you that, in making propositions for an adjustment of the matter, that when persons were going to law, they had a right to buy their peace, and that, in making any propositions, he wished to be understood as making them with that view or purpose?

Answer. I think Mr. Swett made some remarks to that effect at our first interview, and may have subsequently done so. I do not distinctly recollect.

Question. At what time did you make the proposition, through Mr. Merriman, to pay Newell $500 in cash, &c., mentioned in page ?

Answer. My present recollection is, that it was about the first of July; I cannot now recollect.

Question. At any of the said interviews with Mr. Swett, did you speak of the accounts and demands due the firm of Newell & Co.?

Answer. I think I did.

Question. Did you express to said Swett that the claim against Alexander Edgar would be worth more to the parties you represented than it would to Newell?

Answer. I do not recollect telling Mr. Swett so, but I was advised that Mr. Edgar would be liable to the firm *of* any of the goods he had had.

Question. Did you not state to Mr. Swett that, since you had left New York, something had transpired to induce you to believe that the claim against Edgar could be used by the partners in New York, and was of more value to them than you thought it was at the time of your arrival at this place, and first inspection of the books of Newell & Co.?

Answer. I do not recollect making such a statement to Mr. Swett.

Question. Have you received any letters from Tyack or Murray, or either of them, since your arrival at this place? If so, state the date of each letter.

Answer. I have received no letter or letters from either of them since my arrival here.

Answer. Witness is here shown a paper signed Lindley Murray, bearing date July 8th, 1848, marked "No. 1," and signed "John S. Jones, commissioner," on the back, and is inquired of, whether the handwriting and signature is that of Mr. Murray?

Answer. I never saw Mr. Murray write, but the handwriting resembles that of writing that I have seen, and that I was informed and believe was the writing of Mr. Murray.

Question. Do you believe the paper exhibited is in the handwriting of Mr. Murray? Objected to.

Answer. I do not believe it to be his handwriting, but I cannot positively state that it is, having never seen him write, and never have seen much writing that I understood to be his.

Question. How many powers of attorney have you ever received from Tyack and Murray, or either of them, in relation to business with Newell, and of what date?

Answer. I have received but one power of attorney from Tyack and

Murray, which is on file with the papers in this case; I think it was executed about 10th of May; date not recollected.

Question. What inducement was held out to Mr. Edgar to induce him to make the statement signed and sworn to by him, and on file in this cause, or a similar statement filed in the suit between the same parties in the State court?

Answer. I know of no inducement, except such as any honest, disinterested person might have or feel, to state such facts as he might know, with the view of preventing any fraud or injustice.

Question. What inducements might any honest, disinterested man have or feel to make such statements as those referred to?

Answer. I don't think that any honest, disinterested man would have any inducements, or could be induced, to make such statements for any other reason than those above stated; I *do* not know that Mr. Edgar had made any such affidavit until some day or two after it was made; I mean the affidavit filed in the State court.

Question. Did you state to Mr. Swett, at any one of the interviews above referred to, as an inducement to any adjustment or arrangement of the difficulties between Newell and those you represent, that you could adjust any difficulty, and re-establish a feeling of confidence between Newell and Edgar, in relation to the city stock matter?

Answer. I do not recollect making any such statements to Mr. Swett.

Question. What was said about producing an amicable feeling between Edgar and Newell, in relation to the subject-matter of the last interrogatory?

Answer. I can't remember any conversation on the subject referred to.

Question. Have you had frequent conversations with Alexander Edgar, since that time, in relation to his claim to the city of Galveston?

Answer. I have had several conversations with him since that time; the conversations were general, in which his claim was mentioned.

Question. In any of the last mentioned conversations, have you talked of assisting Edgar, in New York, either in the disposition of his stock, or in adjusting any rights he might claim?

Answer. I have said to Mr. Edgar that, if he went on to New York with me, I would render him any service I could there; in our conversations, Mr. Edgar has frequently spoke of going on to New York, and that he would endeavor to go on when I did.

Question. Was there any particular interest in Edgar's claim that you were to have for your services to Edgar in New York?

Answer. There was no particular interest that I was to have for my services to Edgar in New York.

Question. As the agent of Tyack and Murray, did or do you intend to bring suit against Edgar for the amount of his indebtedness to S. Newell & Co., or enforce the collection thereof in any way? Objected to.

Answer. I have not, nor ever had, any intentions respecting it, hav-

ing never had any control over the claim in any way, if the claim had come into my hands I would have endeavored to use it as well as any others due to S. Newell & Co. for the purpose of the payment of the debts of the firm.

Question. Have you ever told Edgar that he was liable for the firm for goods obtained of Newell & Co.?

Answer. I think I have done so; I know I have done so, and asked him how he should pay it.

Question. Have you ever asked Mr. Edgar to settle the claim with you, or give his note for it?

Answer. I have no recollection of ever having asked him to settle with me, or to give his note. I have understood from Edgar that Newell charged him very high prices for the goods, and that they were to be applied to the payment of the proceeds affairs between *he* and Newell.

Question. Were the names of Tyack and Murray mentioned at the time, or in these conversations?

Answer. I can't recollect that the names of Tyack and Murray were mentioned at those particular conversations referred to.

Question. Did Edgar at any of these conversations claim or say that Tyack and Murray, or either of them, had funds of his in their hands?

Answer. Mr. Edgar has stated to me on more than one occasion, that Mr. Newell has represented to him that Capt. Tyack had money in his hands belonging to him, Edgar; also that Mr. Newell had given him an order for those funds.

Question. Did not Edgar say, that from letters of Tyack and Murray, or one of them, it appeared that they, or one of them, had funds of his in their hands?

Answer. Mr. Edgar told me that Mr. Newell showed him a letter from Capt. Tyack, addressed to him, Newell, stating that he had received some six hundred dollars on account of Galveston stock.

Question. Have you told Edgar, or authorized any other person to do so, that in case you succeeded in this suit he should not be sued for the demand against him?

Answer. I do not recollect ever having told him so, or authorized any other person so to do.

Question. At any time before the commencement of this suit, did you ever have any conversation with any person in Galveston about taking the store of goods of S. Newell & Co., or any of them, and selling them?

Answer. I had many conversations and with various persons in Galveston about taking the store of goods of S. Newell & Co., and all of them, and of disposing of them for the payment of the liabilities of the firm.

Question by attorney for plaintiffs. Did these conversations occur during the time your appointment as receiver was in force?

Answer. They did.

Question. Did you contemplate taking them, or any of them, on your own account?

Answer. I never did contemplate taking them, or any of them, on my own account, or in connexion with any other person or persons, or in any other way, or for any other person or persons, than that stated in my answer above.

W. E. WARREN.

Sworn to and subscribed before me this 8th August, A. D. 1848.
JOHN S. JONES, *Com'r.*

Amount merchandise sold			$7,210 95
Cash received on sales merchandise		$1,419 72	
Ditto expended, viz:			
Freight	$46 61		
Certificate port warden	1 50		
Licenses	61 25		
For G. Dumming	70 00		
Advance on cotton	120 00		
Charge on molasses	9 00		
Charge on cotton	12 25		
Bill groceries, N. O.	234 96		
Mr. Andrews' salary	375 00		
Storage wharfage	150 62		
Cartage and labor	104 00		
Porter's wages	48 00		
Sundries	14 00		
S. Newell	233 50		
		$1,480 69	

Merchandise purchased other than in New York.

Groceries in New Orleans	$234 96	
15 sacks coffee, 1,650 lbs., 8c.	132 00	
	$366 96	
Merchandise sold		$7,210 95
Cash on hand	$220 69	
Cash received	1,419 72	
Molasses and cotton	1,412 67	
Due by Edgar	1,715 00	
S. Newell's expenses	608 77	
Expense account	1,247 19	
Sundry persons due	550 00	
	$7,174 04	

Rent due Sauter.

Five months, at $58, - - - - - -		$290 00
Due by Sauter - - - - - - -		270 95
Due for rent - - - - - -		$19 05
Cash received from S. Newell - -	$384 00	
Do. do. do. Mr. Andrews -	100 00	
	$484 00	

Read in evidence at the hearing by complainants.

THE STATE OF TEXAS,
County of Galveston.

Justice's court.

SIMON L. JONES, Edward L. Ufford, Samuel M. Williams, Thomas F. McKinney,
vs.
STEWART NEWELL.

In an action of debt upon two promissory notes for eighty dollars and thirteen cents, ($80 13,) issued attachment July 30, 1842, returnable August 11th, 1842, at 9 o'clock. Also, summons on James M. Seymore, returnable at the same time; returned legally executed by C. B. Adams, county constable.

August 11, 1842, the plaintiff appeared in court by his attorney, F. Merriman; the case being fully heard, it was considered that the plaintiff recover the sum of eighty dollars and thirteen cents, and costs of suit. Judgment for plaintiff $80 13.

JOHN L. DARRAGH,
Justice of the peace.

James M. Cymoore apppeared in court to answer to his garnishee, and being duly sworn, says, that he is indebted to Stewart Newell to the amount of fifty-five dollars. Judgment against James M. Cymoore for fifty-five dollars.

JOHN L. DARRAGH,
Justice of the peace.

Fi. fa., issued July 2, 1845, with apprais't.

REPUBLIC OF TEXAS,
Justice's court.

To the sheriff or constable of the county of Galveston, greeting:

You are hereby commanded that, of the goods and chattels, lands and tenements, of Stewart Newell, you cause to be made the sum of eighty $\frac{13}{100}$ dollars, which "Jones, Ufford & Co., lately in this court,

to wit, on the 11th day of August, 1842, recovered against the said Newell, together with interest on the same, at the rate of 8 per centum per annum from the said 11th day of August, 1842, until paid, together with fifty cents for this writ, and all other costs that may accrue thereon, whereof the said Newell is convicted, as appears to me of record; and that you pay over said money, and make return of this writ to this court, within the time prescribed by law. Given under my hand and seal, this 2d day of July, A. D. 1845.

[SEAL.] J. W. MOORE, *J. P., G. C.*

Return.

Received July 2d, 1845. No property fund.
J. HIGHLAND, *Constable, G. C.*

Fi. fa., issued November 1, 1848, *with appraisement.*

THE STATE OF TEXAS,
Galveston county.

Justice's court.

To the sheriff of said county, greeting:

Whereas Jones, Ufford & Co., on the 11th day of August, in the year of our Lord eighteen hundred and forty-two, at our justice's court, hath recovered against Stewart Newell the sum of eighty dollars and thirteen cents, ($80 13,) for debt, and one dollar and fifty cents ($1 50) for costs, and which to the said Jones, Ufford & Co., are now adjudged. These are therefore to command you, that of the goods, chattels, and estates of the said Stewart Newell, you cause to be made the full amount of this execution, after deducting therefrom the legal fees and commissions for collecting the aforesaid amount, and that you have this writ at the office of James W. Moore, a justice of the peace in and for said county, on the return day thereof, certifying how you have executed the same.

Given under my hand this first day of November, A. D. 1848.

Attest. J. W. MOORE, *J. P., G. C.*

Compute interest on the debt, from August 11th, 1842, at 8 per cent. per annum until paid.

Attest. J. W. MOORE, *J. P., G. C.*

Bill of costs.

Justice, for executions and entering returns - -		$1 50
Sheriff, for returning execution - - - -		50
		$2 00
Cr. July 5, 1845, - - -	$39 47	
" September 1, 1845 - - -	31 05	

Attest. J. W. MOORE, *J. P., G. C.*

Return.

Received same day issued, and returned January 1st, 1849, not executed, no property belonging to the defendant liable to execution having been found in my county.

P. BRYAN, *Sheriff, G. C.*

THE STATE OF TEXAS,
County of Galveston.

I, James W. Moore, a justice of the peace in and for said county of Galveston, certify, that the foregoing transcript contains a true copy from the docket of John L. Darragh, a justice of the peace in and for said county; and also of two executions issued, with the returns endorsed thereon, in the suit of Jones, Ufford & Co. vs. Stewart Newell.

Given under my hand this fifteenth day of November, A. D. 1849.

J. W. MOORE, *J. P., G. C.*

The following depositions were read in evidence at the hearing by complainants:

Samuel W. Williams, on part of plaintiff.

I own a joint interest with other parties in a tract of land lying on Buffalo bayou, and adjoining the city of Houston or the city league. The tract extends down to the Harrisburg tract; I don't know that my interest joins the city of Houston; land lying within a mile of Houston that was timbered I think to be valuable; from my knowledge of it I am inclined to think it is likely to be prairie; if the land be timbered I consider it worth five dollars per acre; I consider that timbered land, no matter how poor there, is worth five dollars per acre; if it be prairie land, though contiguous to Houston, I do not think it would bring more than one dollar and a half to two dollars per acre. There may be some lands upon Caney or Oyster creek that would command money, but generally speaking I think that almost any sacrifice would scarcely command money. I do not think, generally speaking, that it would be practicable to raise seven thousand seven hundred and fifty dollars by the sale of lands. In the counties upon the Brazos, that is, in the county of Washington and the county above Milam, I believe I own lands well located that I would sell for fifty cents per acre. I would not warrant titles, but the lands are granted to me direct by the government of the State of Coahuila and Texas. I was raised a merchant.

Question by solicitor for plaintiffs. Would you think it judicious to sell out a stock of goods for wild lands, as a means of raising money?

Answer. I think it would not be judicious. I do not think it practicable to raise money from the sale of lands at this time; my general reasons for the opinion are that money is very scarce, that the lands lying between the Trinity and Guadaloupe since we were annexed have greatly depreciated in value; the farmers in that district, many of them removing for the west; it is a general impression that there is a vast

amount of located land for sale, yet I have no propositions by which I can certainly know the facts; it seems to be conceded however. I would myself sell thirty thousand acres if I could it practicable, but thinking that not to be the case, my land is not put into market. I believe some merchants are now going to New York to make purchases of goods. I know of no good reason why a merchant in Texas should go to New York to purchase goods, if the articles he wants can be obtained here as advantageously as that place. It would be very difficult I think at this time to take a lot of merchandise and obtain cash for them. I do not think it would be practicable to raise money by sale of goods in Texas, unless upon a very considerable sacrifice, but I should think that a general lot of merchandise would bring within some twelve to twenty per cent. of the original cost if shipped, say to New York, Baltimore, or New Orleans.

Cross examination.

When I speak of goods bringing within twelve to twenty per cent. of cost, I mean a stock of fall goods, well selected and well kept. I do not know of any man with the exception of John A. Sauters, who has gone to New York to purchase goods with cash, and not upon a greater or less credit. I would consider that a man would do well to dispose of the remainder of his stock after having done the season's business, at cost and transportation, together with other expenses of placing goods here. I mean the actual cost and charges on a reasonable credit for good paper. I am inclined to think that generally speaking the last season's business has been a fatal one. Of the tract of land in my direct examination referred to, I have no information as to position and character and quality, whereby I can form any opinion of its value. I sold land on the west side of the Bernard, a half league, at four dollars cash per acre. I have no idea how far from Brazoria it lies, but I would suppose it not more than five or six miles. The tract was considered a very valuable one; the sale was made in February last.

SAML. M. WILLIAMS.

Sworn to and subscribed before me, this the 8th day of August, A. D. 1848. JNO. S. JONES, *Com'r.*

Henry Journey, on part of plaintiffs.

I am in company with Mr. Gilbert Winney in the livery stable business; Messrs. Swett, McGreal, and Dockrell, called on me in the evening, some three or four weeks ago, and inquired for Mr. Burr, the ferryman at San Luis; the gentlemen asked me if there were any good horses in the stable. Mr. Dockrell said they wanted a horse and buggy; Mr. McGreal had but little to say, and I recollect nothing, only to ask if the harness was strong. I let them have a horse and buggy; nothing was said about the pay for it. I think the buggy was obtained about twelve or one o'clock; it was got as I understood to go to Velas-

co; do not know what Swett wanted with the ferryman; he found him but could not get him to go down; do not know what he wanted the ferryman for. I have never called on Mr. Dockrell for pay for the buggy, nor on Mr. McGreal for it, but believe Mr. Winnie has called on Mr. McGreal for it, at least he said so. HENRY JOURNEY.

Sworn to and subscribed before me, this 8th day of August, A. D. 1848. JOHN S. JONES.

On behalf of complainants.

UNITED STATES DISTRICT COURT,
For the district of Texas.

WILLIAM TYACK and Lindley Murray, complainants,
vs.
STEWART NEWELL and Stephen W. Doss, defendants.

Personally came before me, Gilbert Winnie, who, being duly sworn, says, that the same morning that N. B. Yard went to Velasco after the goods on board the Alamo, as he told me, I met Mr. Dockrell at the west end of the island, (defendant's counsel objects to any declarations made by Dockrell as incompetent and irrelevant,) upon which witness proceeded to state as follows, I understood from Dockerell that he was proceeding as fast as possible to take charge of the goods on board of the Alamo, and get them to Brazoria. Dockrell told me that Mr. McGreal was to settle for the horse and buggy in which he went to the west end. I understood Dockrell to say about midnight he left Galveston. GILBERT WINNIE.

Sworn to and subscribed before me, this 8th August, 1848.
A. M. HUGHES,
Commissioner.

Read in evidence at the hearing by complainants.

THE STATE OF TEXAS,
County of Galveston.

At a term of the district, begun and holden at the city of Galveston, within and for the county of Galveston, on the twenty-second day of May, A. D., before the honorable Joseph C. Megginson, judge thereof, the following cause came on for trial, viz:

JOHN GEDDIS, plaintiff,
vs.
STEWART NEWELL, defendant.

Petition, filed February 28th, 1844.

REPUBLIC OF TEXAS, *Galveston county.*

To the honorable the district judge, presiding in and for said county.

The petition of John Geddis would most respectfully represent to

your honor, that heretofore, to wit, on the third day of May, eighteen hundred and forty-one, at New Orleans, to wit, in said county, Stewart Newell, of said county, made and executed his certain promissory note in writing, whereby, four months after the date of said note he promised to pay to the order of your petitioner, at [the] Bank of Orleans, in the city of New Orleans, one thousand dollars, value received, which said note is hereto annexed, and made a part of this petition. Your petitioner would further represent that, on the third day of May aforesaid, the said Stewart Newell, in order to secure the payment of the said sum of one thousand dollars aforesaid at the time specified in said note, executed a mortgage in favor of your petitioner on lot number eleven, in block number seven hundred and thirty-eight, and lots numbers one, two, three, four, five, six, and seven, in block seventy-nine, in the city and county of Galveston, together with all the buildings thereon, and all the rights, ways, and privileges thereto belonging; a copy of which said mortgage, duly authenticated, is hereto annexed, and made a part of this petition, the original being without the limits of the republic of Texas, and beyond the power, custody, and control of your petitioner.

Your petitioner represents that the said debt has long since been due, and that since the period the same fell due he is entitled, by the laws of Louisiana, where the said contract was entered in, to interest at the rate, to wit, of ten per cent. per annum. Wherefore he prays that the said Stewart Newell may be cited to appear and answer the plaintiffs' demand, and show cause, if any he has, why said mortgage should not be foreclosed.

He prays that he may have judgment for his debt, interest, and costs, and that the mortgaged premises be sold to satisfy the same; and he further prays that he may have all such further and other relief; judgment, and execution the nature of the case demands, and justice requires.

B. C. FRANKLIN,
Atty. for plaintiff.

Mortgage.

STATE OF LOUISIANA,
City of New Orleans.

Before me, William Young Lewis, notary public in and for the city of New Orleans, duly commissioned and sworn, this day personally appeared Stewart Newell, of the city of Galveston, in the Republic of Texas, now in this city; who declared that he is justly and lawfully indebted to John Geddes, of the city of New Orleans, in the State of Louisiana, in the sum of one thousand dollars, current money of the United States, and in liquidation of the payment thereof the said Stewart Newell has issued his promissory note, dated the third day of May, eighteen hundred and forty-one, to the order of, and endorsed by, the said John Geddes, at four months after date, for that said amount, which said note the said John Geddes hereby acknowledges to have

received after the same had been marked ne varietur by said notary to identify it with this act.

Now, to secure the payment of the aforesaid promissory note, with all interest and costs, the said Stewart Newell, of the city of Galveston, doth by these presents, mortgage and specially hypothecate unto the said John Geddes of this said city, present and accepting, the following described property, situate, lying, and being in the said city of Galveston, viz.:

Lot number eleven, in block number seven hundred and thirty-eight, and lots numbers one, two, three, four, five, six, and seven, in block number seventy-nine, known and designated on the plan of said city of Galveston, together with all the buildings thereon, and all the rights, wages, and privileges thereunto belonging, being the same property conveyed to said Newell by John S. Sydnor, per act bearing date the twenty-sixth day of December, eighteen hundred and forty.

And which said property the said mortgage declared is free of all encumbrances whatever, the said mortgagee being satisfied with this declaration, and waiving said mortgage accordingly.

Done and passed at New Orleans, this third day of May, eighteen hundred and forty-one, in presence of William P. Lewis, and Stewart and Lewis, both of this city, witnesses, who have hereunto signed their names with said parties, and me the said notary.

Signed, STEWART NEWELL,
JOHN GEDDES,
WILLIAM T. LEWIS,
STEWART H. LEWIS,
W. T. LEWIS,
Not. Pub.

I hereby certify the foregoing a true copy of the original upon my current records.

In faith whereof I hereunto set my hand and seal, at New Orleans, this 5th day of May, 1841.

[SEAL.] W. T. LEWIS, *N. P.*

Certificate of William Bryan.

Consulate of the Republic of Texas.

I, William Bryan, consul for the Republic of Texas, for the port of New Orleans, State of Louisiana, and United States of America, do hereby certify, that William Young Lewis is a notary public duly commissioned; that his signature to the annexed document is genuine; and that as such his official acts are entitled to full faith and credit.

Given under my hand and seal of office, at the city of New Orleans, this fifth day of May, eighteen hundred and forty-one, and of the independence of Texas the sixth.

[SEAL.]

WM. BRYAN, *Consul.*

Certificate of Oscar Farish, C. C., G. C.

REPUBLIC OF TEXAS,
County of Galveston.

I, Oscar Farish, clerk of the foregoing and aforesaid county, hereby certify, that the within instrument of writing from Stewart Newell to John Geddes was filed here in my office for record on this day, at 3 o'clock, p. m., and recorded same day at 4 o'clock, p. m., in record book "B," No. 1, pages 280 and 281.

In testimony whereof I hereto annex my signature and affix my official seal at my office, in the city of Galveston, this the [SEAL.] 10th day of May, 1841, and the sixth year of the independence of the Republic.

Attest: OSCAR FARISH, *C. C. G.*

Note.

Dollars 1,000. NEW ORLEANS, *3d May*, 1841.

Four months after date, I promise to pay to the order of Mr. John Geddes, at Bank of Orleans, in this city, one thousand dollars, value received.

STEWART NEWELL.

[Endorsed across the face.] New Orleans, 3d May, 1841, ne varietur.

W. T. LEWIS, *Note, &c.*

Summons issued 14th March, 1844.

REPUBLIC OF TEXAS,
County of Galveston.

District court, spring term, 1844.

To the sheriff of said county, greeting:

You are hereby commanded to summon Stewart Newell, if he be found in your county, to be and appear before the honorable the judge of the district court of the first judicial district, at a court to be holden within and for the county of Galveston, on the fourth Monday after the fourth Monday of March, 1844, to answer the complaint of John Geddes, in an action for foreclosure to the amount of one thousand dollars, as set forth in the petition, of which you will serve the defendant with the accompanying copy; herein fail not, and have you then there this writ.

Witness Thomas Bates, clerk of said court, this fourteenth day of March, A. D. 1844, and of the Texian independence the ninth year.

Attest: THOS. BATES, *Clerk.*

Sheriff's return.

Received 14th March, 1844; executed 18th March, 1844, by serving defendant in person with a copy of petition, attested by district clerk, and a true copy of this writ.

H. M. SMYTH,
Sheriff G. C.

Default.

Spring term, 1844, April 29th, judgment by default.

Answer filed April 30th, 1844.

REPUBLIC OF TEXAS,
County of Galveston.

District court, spring term, 1844.

JOHN GEDDES
vs.
STEWART NEWELL.

And the defendant, by J. A. Swett, his attorney, comes and defends the wrong and injury, when, &c., and says, that the said petition of the said plaintiffs in this cause, and the matters and things therein contained, in manner and form as the same are above stated and set forth, are not sufficient in law for the said plaintiff to have or maintain his aforesaid action thereof against the said defendant, and he, the said defendant, is not bound by law to answer the same. Wherefore by reason of the insufficiency of the said petition in this behalf, the said defendant prays judgment, and that the said plaintiff may be barred from having or maintaining his aforesaid action thereof [against] him, said defendant.

And the said defendant here states and shows to the court, the following cause of demurrer to the said plaintiff's petition.

First. For that he, the said petition[er,] is not entitled of any court, neither doth it appear in and by the said petition in what court the said action is brought against the said defendant; also for that it doth not appear in or by the said petition to what term the said petition was or is returnable; also for that it doth not appear by said petition to what term, or what court, the citation supposed to be founded upon said petition was or is returnable; and also for that the said petition is not entitled of any term whatever.

Second. For that it doth not appear in or by the said petition of said plaintiff, that any debt or sum of money whatever was due from the said defendant to the said plaintiff at the time of filing said petition; also for that it is not averred that said defendant ever has owed plaintiff any sum whatever since the third day of May, 1841; also for that the said petition is in other respects uncertain, informal, and insufficient, negligent, and unsubstantial; also for that it is not averred in said petition that demand of payment was ever made of payment of said note.

Fourth. For that plaintiff hath not brought the said supposed mort-

gage deed into court or made any profert thereof, and because the defendant in the manner the said supposed mortgage deed is pleaded in said petition cannot have oyer of the same, so that he might know whether it is or is not the deed or mortgage of the defendant; and because it doth not appear by said petition whether the said supposed mortgaged deed is actually destroyed or whether it doth not still exist, and only lost or mislaid; also for that the averments contained in plaintiffs' petition are repugnant and inconsistent with the plaintiffs' right to this action; wherefore, &c.

J. A. SWETT,
For defendant.

Defendant also denies all and singular the allegations in plaintiff's petition contained.

J. A. SWIFT, *for defendant.*

Affidavit filed May 7, 1844.

JOHN GEDDES
vs.
STEWART NEWELL.

District court, spring term, A. D. 1844.

I, Stewart Newell, defendant in the above entitled cause, make affidavit, and say, that I cannot safely proceed to trial at the present term of this court, on account of the absence of , material witnesses who are at present, and as affiant believes, have been, ever since the commencement of this suit, in the city of New Orleans, in the State of Louisiana; that their names are, Thomas B. Winston, Lewis V. Hubbard, Charles Eluyer, E. P. Shall, R. H. McNair, Edwin Harris; that they, or either [of] them, are not absent from this term of the court by this affiant's procurement or consent; that I believe I can procure the testimony of said witnesses at the next term of this court; that this application for a continuance is not made for delay, but that justice may be done.

STEWART NEWELL.

Sworn and subscribed, in open court, this 29th April, 1844.

THOS. BATES, *Clerk.*

Continuance.

Spring term, 1844, May 17. Continued on affidavit of defendant, and leave to plaintiff to amend.

Continuance.

Fall term, 1844, November 6th. Continued as on affidavit of defendant, and leave to both parties to amend.

Continuance.

Spring term, 1845, April 24. Continued by consent.

Continuance.

Fall term, 1845, October 22. Continued.

Rule for costs.

Fall term, 1846, November 11. On motion of the clerk of this court, it is ordered that the plaintiffs in this suit give security for costs within time prescribed law.

Continuance, &c.

Fall term, 1846, November 16. The rule for costs entered on the first day of this term is extended to the first day of the next term, and the cause is continued.

Continuance.

Spring term, 1847, May 26. Continued as on affidavit of defendant.

Continuance.

Fall term, 1847, December 20. Continued.

Demurrer overruled.

Spring term, 1848, June 23. The defendant's demurrer to the plaintiff's petition having been submitted to the court, upon consideration thereof, it is ordered and adjudged that the said demurrer be, and the same is hereby, overruled.

Decree.

Spring term, 1848, July 8. This cause coming on to be heard, and the plaintiff appearing by his attorney, and the defendant appearing in person, and also by his attorney, a jury being by the parties waived, and the cause submitted to the court on the pleadings, the evidence, the argument of counsel, and the agreement of the parties, it is ordered, considered, adjudged, and decreed, by consent of the parties, that the plaintiff have and recover of the defendant, Stewart Newell, the sum of thirteen hundred and forty-five dollars and eighty-four cents, for his debt and damages in his petition mentioned, and besides costs in this case incurred and expended. That execution may issue at any time on application to the clerk of this court, to be levied on the goods, chattels, lands, and tenements, of the defendant. It is further ordered, adjudged, and decreed, that the plaintiff is entitled, and that he have, hold, and retain, a lien on lot number eleven, in block seven hundred and thirty-eight, and on lots number one, two, three, four, five, six, and seven, in block number seventy-nine, all situated, lying, and being in the city and county of Galveston, and known and distinguished on the plan of the said city of Galveston by the numbers of lots and blocks aforesaid, with all and singular the buildings, improvements, and appurtenances, to the same belonging or in anywise appertaining, to secure the payment of the sum of thirteen hundred and forty-five dollars and eighty-four cents, with all accruing interest and the cost of this suit; and

it is ordered, adjudged, and decreed, that in case an execution is issued for the sum of thirteen hundred and forty-five dollars and eighty-four cents and cost of suit is returned without satisfaction of the debt, interest, and cost, then at any time after the next term of this court, it is ordered, adjudged, and decreed, that an order issue to carry this decree into effect, and that the sheriff be directed to seize and sell the lots and parcels of land, or such portion of them as will be sufficient to pay off and discharge the debt, damages, interest, and cost, adjudged and decreed to the plaintiff, or so much as shall appear to be due on and after the return of the execution aforesaid. It is further ordered, adjudged, and decreed, that all and any process issue that may be necessary and proper, until this decree is carried into full effect, and the plaintiff's demand be fully satisfied and paid off.

Fi. fa. issued July 7th, 1849.

THE STATE OF TEXAS,
Galveston county.

To the sheriff of Galveston county, greeting:

Whereas, John Geddes, on the eighth day of July, in the year of our Lord eighteen hundred and forty-eight, at our district court, hath recovered against Stewart Newell the sum of thirteen hundred and forty-five dollars and eighty-four cents ($1,345 84) for debt and damages, and which to the said John Geddes are now adjudged: These are, therefore, to command you, that of the goods, chattels, and estate of the [said] Stewart Newell, to wit, lot No. eleven, (11,) in block seven hundred and thirty-eight, (738,) and lots Nos. one, two, three, four, five, six, and seven, (1, 2, 3, 4, 5, 6, and 7,) in block No. seventy-nine, (79,) all situated, lying, and being in the city and county of Galveston, decreed to be sold to satisfy this judgment, with all and singular the buildings, improvements, and appurtenances to the same belonging, &c., you cause to be made the full amount of this execution, after deducting therefrom the legal fees and commissions for collecting the aforesaid amount, and that you have this writ at the clerk's office of said court, on return day thereof, certifying how you have executed the same.

[SEAL.] Given under my hand, and the seal of said court, this seventh day of July, A. D. 1849.

Attest. J. W. MOORE, *Clerk*.

Compute interest on the debt and damages from July 8th, 1848, at eight per centum per annum, until paid.

Attest. J. W. MOORE, *Clerk*.

Bill of costs.—Clerk's fees.

Copy of petition and writ - - - - -	$2 25
Docketing cause, 15 w'ds, $1 00; rule, 25c. - -	1 40

Filing papers, 60; venire facias, 10	70
Enterin[g] appearance, 10; aff't, 25	35
8 continuances	1 20
Default	50
Entering judgment and decree	75
Subpœna, 25	25
Execution and return	1 00
Taxing costs	25
County tax	3 00
Recording proceedings	3 25
Sheriff's fees. For serving one writ	1 00
	$15 90

Attest. J. W. MOORE, *Clerk.*

Franklin's receipt.

Rec'd of P. Bryan, sheriff, two hundred and thirty-eight dollars and seventy-five cents, moneys arising from the levy and sale on the 2d Oct., 1849.

BENJ. C. FRANKLIN,
Att'y for pltff.

Sheriff's return.

Rec'd July 7th, 1849, and executed August 13th, 1849, by levying upon the within described property, being lot (11), in block (738), and lots (1, 2, 3, 4, 5, 6, and 7,) in block 79, with improvements thereon, which said property was, on the 13th August, 1849, advertised for sale on the first Tuesday in Sept., 1849, by posting up written notices at three of the most public places in the county, one of which being the court-house door, Sept. 4th, 1849. The sale of the above property is postponed, by consent of the parties, by their counsel, until the first Tuesday in October.

P. BRYAN, *Sheriff, G. C.*

And on the 10th day of Sept., 1849, the within described property was advertised for sale on the first Tuesday in October, 1849, in the same manner as above stated, being lot No. (1), in block No. (738), and lots numbers (1, 2, 3, 4, 5, 6, and 7), in block No. (79), with the buildings, improvements, and appurtenances to the same belonging, situated, lying, and being in the city of Galveston; and on said first Tuesday in October, 1849, I offered the said property for sale at public auction, before the court-house door of Galveston county, between the hours of 10 o'clock, a. m., and 4 p. m., to the highest bidder, for cash, without appraisement; and the same was struck off, and by me adjudged to Benj. C. Franklin, he being the highest and best bidder for the same, having bid the sum of fifty dollars ($50 00) for lots No.

(11), in block No. seven hundred and thirty-eight (738), and two hundred dollars ($200 00) for lots Nos. (1, 2, 3, 4, 5, 6, and 7,) one, two, three, four, five, six, and seven, in block No. (79) seventy-nine, with the improvements thereon, which was more than any other person would bid, making the aggregate sum of two hundred and fifty dollars, the amount of which, after deducting $12 25 paid by pl'ff on costs in cash, to be credited to principal debt, the balance of the costs having been paid J. D. Knight, (it being $14 90.) No other property belonging to the defendant found in my county.

P. BRYAN, *Sheriff, G. C.*

THE STATE OF TEXAS,
County of Galveston.

I, James W. Moore, clerk of the district court in and for said county, certify, that the foregoing transcript contains a true copy of all the proceedings had in said cause, John Geddis vs. Stewart Newell.

In witness whereof, I hereunto set my hand, and affix [SEAL.] the seal of said court, this fourteenth day of November, A. D. 1849.

J. W. MOORE, *Clerk.*

The following testimony was read at the hearing by defendants:

In the United States district court, district of Texas.

WM. TYACK et al.
vs. } In equity.
STEWART NEWELL et al.

On part of defendants.

Lawrence Frosh, of Galveston county, on oath states, that on the 10th day of July, A. D. 1848, he was requested by Peter McGreal to ship the goods in the store lately occupied by Stewart Newell & Co., by some vessel bound for Brazoria; that said deponent went with said McGreal to said store, which was opened by McGreal, and after examining the goods and packages deponent advised McGreal that the sloop Alamo would carry most of said goods; that while there the captain of the Alamo appeared, and asked if I or McGreal had any freight for the Brazos, as he was ready to leave and had no freight. Deponent then engaged the Alamo to take the said goods to Brazoria, to the brother-in-law of Peter McGreal; all of this occurred in presence of Mr. J. Dockerill; I got Mr. Suder and Mr. Dockerill to aid in putting the goods in order for shipping, and in closing the stores, and between four and five o'clock, p. m., commenced sending goods to vessel, that being the earliest hour at which the vessel was ready to take the freight, and continued to send the goods until about 9 o'clock, p. m., when sufficient had been sent to fill the vessel; the balance of the goods were to remain in the store. The whole of the goods, Mr. McGreal

informed me he had bought for his brother-in-law for the following consideration, viz., two thousand dollars cash, two thousand dollars in good claims, notes, &c., and over seven thousand dollars in lands well situated. I was familiar with the stock of goods; many were unsuitable, and there was little chance of selling any until next winter; the best portion of the goods had been sold previously; the balance of the stock on hand was a broken one. The goods left in the store I proposed buying from McGreal.

The packing and shipping was done openly and publicly, and in view of over twenty person; many persons came into the store while it was going on. Mr. Bremond, from Houston, came and told me that he was sorry he was too late, as he came on the express purpose to buy Newell's stock. I saw P. G. Merrett, Hubbell, Rhodes, Messrs. James, Thompson, and many other gentlemen, while engaged in the business on said afternoon and evening.

I was on the wharf when the vessel completed her lading; the captain said it was a fine time, wind and tide favorable, and a bright moonlight, and thought he could run to Velasco next morning early.

I took dray receipts for all of said goods, and have them now in my possession. In sending goods to Brazoria, or any part of the Brazos, it was and is the custom to take dray receipts merely. I ship a large amount of goods to the Brazos every season, and am in the habit to hand the dray receipts to the purchaser, or enclose them by letter to the consignee. I frequently ship goods in the evening on vessels for Brazoria, and have often sent goods in the steamer S. M. Williams after night for Brazoria, and even as late as 9 o'clock, p. m. Sometimes vessels drop down the same night to the point, or even go out in a clear night; and when there is no time left in the day time, the goods have to be shipped in the evening. I did not see Mr. Newell at the store on the 10th July, A. D. 1848.

I was on the wharf when the loading was finished, and by request of the captain of the "Alamo," given in a loud voice, deponent and John R———, esq., cast off the lines which fastened the vessel to the wharf. Mr. McGreal was present. It was then not later than 10 o'clock, p. m.

The store was fastened and locked by Suder and Dockerill; part of the dray receipts were left on the desk; the dray receipts were to be sent the next day to Brazoria by Mr. Dockerill, who I understood was to leave on the 11th July.

On the 11th July, 1848, went to the store with Mr. McGreal and Mr. Dockerill after breakfast, and found the store open and Mr. N. B. Yard there; saw Mr. Martin, deputy marshal, there; also Mr. W. E. Warren. Mr. McGreal inquired of Mr. Yard and Martin if either of them had broken open the store, and how had they got in there; but neither answered him. Mr. Yard then told McGreal that he had seized on the goods as the property of Stewart Newell & Co., and Mr. McGreal showed Yard, and afterwards read aloud, a receipt from Stewart Newell & Co. to S. W. Doss, of Brazoria, for all of said

goods, and demanded possession for Doss, which was refused by Yard, who said he was fully secured against damages by Mr. Warren; Mr. Dockerill, Frank Walley, and Dr. J. D. Knight were present at the time. Mr. McGreal had the key of the front door when [we] went to the store; this door was fastened on the inside. The back door had been forced open, and was entered by Mr. Yard, who came through the store to the front door and opened it. I don't know who first forced open the store after it was closed on the night of the 10th July, 1848.

Cross examination.

Question by solicitors for complainants: Did you ever sell cotton and molasses to Stewart Newell?

Answer. I did; I sold him I think about April, 18 bales cotton, and 30 or so barrels of molasses.

To question by solicitor for complainant. I received partly goods that I had myself purchased, and partly goods purchased by my customers on my account. I took a part of the goods to my store, received for the cotton and molasses.

LAWR. FROSH.

Sworn to and subscribed before me, this 8th day of August, A. D. 1848.

JOHN S. JONES, *Com'r.*

In the United States district court, district of Texas. In equity.

WM. TYACK et al.
vs.
STEWART NEWELL et al.

Christian Luder says, that on the 10th day of July, 1848, assisted Mr. Frosh in packing and shipping the goods from the store of Stewart Newell & Co. on board the "Alamo," for Brazoria. I was informed they belonged to the brother-in-law of Peter McGreal; the packing was begun about 3 o'clock, p. m., and shipping completed between 9 and 10 p. m. Mr. Dockerell and me closed, fastened, and locked the doors of the store.

I have often seen goods shipped to Brazoria by Mr. Frosh as late as the goods put on the "Alamo." I have been engaged in business for several years in Galveston.

Cross exanined.

I was, at the time the goods were shipped, the clerk of Mr. Frosh; I commenced with him, and have been his clerk ever since the 2nd November, 1847; I came to Galveston in 1845; I have been absent during that time 9 months; I have been engaged in shipping goods in Frosh's house; I have been engaged in shipping goods from Frosh's

house many times; about two weeks since I shipped goods to Patrick McGreal and Leonard; I have shipped goods in the night 5 or 6 times, and as late as half past ten; I shipped by the Sam. Williams, the Alamo, and Delano's boat, so late as half past ten.

Question by solicitor for plaintiff. Is it the common custom with Frosh to ship in the night?

Answer. It is not the common custom with Frosh to ship goods in the night; I have shipped goods 5 or 6 times in the night, as before stated, from the house of Frosh.

Question. How many doors did you lock of the store of Newell & Co. on the night you shipped the goods?

Answer. I locked one door, the front door; there was no lock on the other door; the upper bolt was off; it was the back door; one of the front doors was not open at all; it was shut up all the time, and was well fastened.

Question by solicitor for defendants. When you left the store, how were the doors secured that night, 10th July, 1848?

Answer. The front doors were locked with good locks, and Mr. Dockerill and myself took some large pieces of castings and placed them against the back door, which was also fastened with the lower bolt; we fastened the house up as well as we could for security.

Question by solicitor for plaintiff. At what time did you cease to be clerk of Frosh?

Answer. On the 12th July; I then became a partner in the house with Frosh.

Question by *for* plaintiff. How long is your partnership with Frosh to continue?

Answer. One year.

Question by solicitor for plaintiff. Have any goods been brought to the house of Frosh, since you became a partner therein, from the store of S. Newell & Co.?

Answer. No; not a single piece.

CHR. LUDER.

Sworn to and subscribed before me, this 8th day of August, A. D. 1848.

JOHN S. JONES, *Com'r.*

In the United States district court, district of Texas. In chancery.

TYACK & MURRAY
vs.
NEWELL & DOSS.

In the above entitled cause James Welsh states, that Stephen W. Doss has been absent from the State of Texas nearly all the time, with the exception of a few short visits, since 1839; and that from aught he knows, the said Doss may be worth ten thousand dollars; that in rela-

1607.

tion to his means or course of business, he has no particular knowledge.

JAMES WELSH.

Sworn and subscribed before me, this 5th day of August, A. D. 1848.

JOHN S. JONES, *Com'r.*

In the United States district court, district of Texas. In equity.

WM. TYACK et al.
vs.
S. NEWELL et al.

In the above entitled cause, Pryer Bryan says, that he is, and was, on the 10th day of July, sheriff of Galveston county; that about 10 or 11 o'clock, a. m., on said day, he was ordered by the honorable district court, of the first judicial district, to deliver up all the goods, etc., previously by him seized, belonging to Stewart Newell & Co.; and on said day he delivered up all of said goods, etc., to said Stewart Newell; that on going from the court-house to said store of Newell & Co. deponent met Peter McGreal, and he walked with deponent and Newell, and Dr. J. D. Knight, to said store, and witnessed the delivery of said goods by deponent to said Newell; after which deponent left said store.

P. BRYAN.

Sworn to and subscribed before me, this 7th day of August, A. D. 1848.

JOHN S. JONES, *Com'r.*

United States district court, district of Texas, sitting in equity.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss.

Depositions taken in behalf of Stephen W. Doss, one of the above named defendants.

Deposition of John Warren.

A receipt produced, dated July 10th, A. D. 1848, signed by Stewart Newell & Co., is identified by John Warren, and was signed by him on the day of the date thereof as a witness; said receipt was signed by Stewart Newell in the presence of John Warren. The receipt was signed in a house belonging to John A. Sauters, and in that part thereof where Stewart Newell & Co. kept store. Witness does not recollect the exact time of signing the receipt; it might have been before or after twelve o'clock. Doct. J. D. Knight and Peter McGreal were present at the time the receipt was signed, with myself and Stewart Newell. The witness, John Warren, was requested to accompany

McGreal, Newell, and Knight, down to Newell & Co.'s store, to witness the delivery of the goods. Stewart Newell told witness that he had sold the goods to Peter McGreal, and wished him to witness the delivery of them. The goods were all packed up in boxes and packages; the parties went up to the second story of the house, and Mr. Newell pointed out the goods to McGreal, and stated that he then delivered them to him. Some of the goods were below, and the delivery of those below stairs was made in the same day. The key of the store was then delivered by Newell to McGreal; the possession of the storehouse was also at the same time delivered to McGreal. Witness met the parties at Ostrander's coffee-house; the meeting was accidental, and without any *any* preconcert whatever; Newell said that he had sold the goods to McGreal, and McGreal stated that he [had] bought them of Newell. Witness did not know for what he was desired to accompany the parties, until he arrived at the storehouse of Newell & Co.

Cross examination of John Warren, by F. H. Merriman and Lorenzo Sherwood, esqrs., solicitors for agent of plaintiffs, and receiver Mr. N. B. Yard being present in person.

Mr. McGreal began to read the receipt referred to above in direct examination, but was stopped by witness, witness stating it was unnecessary, as he would know his own signature. Witness did not see receipt written; believes it was drawn up before he went to the store. Witness was not in the court room when the judge ordered the sheriff to deliver over the goods; witness was in the room under the court room, at the time he was called on to go down to the store of Newell & Co. When witness arrived at the store the door was closed, and he believes was locked; witness did not see the sheriff deliver the key to Newell. Witness did not go to the store but once in company with Newell and Knight; the store was opened, and witness believes was unlocked by Newell.

JOHN WARREN.

Sworn to and subscribed before me, this 5th day of July, A. D. 1848.
JOHN S. JONES, *Com'r.*

Direct examination of Isaac D. Knight.

I. D. Knight examined.

Witness identifies a receipt produced, dated July 10th, 1848, and says that he signed it as a witness, on the day of the date thereof, at the same time and place that it was signed by John Warren; after signing the paper he went up stairs, and Mr. Newell placed his hands upon a box or two, and a bale or two, and asked McGreal if he would accept of the goods according to the sheriff's inventory, or whether he would make a new examination of them. Newell stated that he was present a greater part of the time the inventory was being made out, and he

knew it to be correct. McGreal then replied, "very well, I will accept them according to the sheriff's inventory." Newell then said he delivered the goods to McGreal as they were then in the store, as McGreal saw them. Witness says there was a reservation of a small lot of goods made by Newell at the time of delivery; does not know what kind, nor the exact value, but thinks about two or three hundred dollars. The goods reserved was a consignment, and did not belong to Newell & Co., and were so stated to be by Newell at the time of delivery. Witness states that, upon leaving, the store key was delivered by Newell to McGreal; McGreal closed the door, and retained the key. Witness believes that he, Newell, and McGreal, met John Warren near Conrad's cigar store. The sheriff had possession of the store and goods on the day of date of receipt above referred to, and delivered them to Newell prior to the delivery of the goods by Newell to McGreal above mentioned; witness had been to the store with Mr. Newell and the sheriff, and saw the sheriff deliver possession of the store and goods to Mr. Newell. The delivery of the goods by Newell to McGreal was about eleven o'clock in the day. Witness was present at a conversation between Jesse A. H. Cleveland and Stewart Newell, in relation to the sale of a stock of goods above mentioned, by Newell to McGreal, for Doss; the conversation took place at the house of Mr. Andrews—Newell, Cleveland, and witness were all who were present; witness heard all that was said by the parties at the time. Witness recollects that, after Mr. Newell stated he had made a sale to Doss, through McGreal, Mr. Cleveland replied to Newell, to be careful he was not worse off than before, that Mr. McGreal was a hard customer, or to that effect. Newell replied, that he thought that he had made a good sale, and that it would stand; that he had taken advice after he had made the arrangement with McGreal, and the advice was, that it was legal and would stand. Newell remarked, that the suit in relation to the goods had cost him already about twelve hundred dollars. Cleveland remarked that he would have pursued the same course that Newell had done in the matter.

Question by sol. for defendant. Did you hear Cleveland tell Newell that he would be worse off than before he sold the goods, for he never would get any thing?

Ans. by witness. I did not.

Question by sol. for deft. Did you hear Newell tell Cleveland that he thought he would get something?

Ans. I did.

Question by sol. for deft. Did you hear Cleveland tell Newell that McGreal was a pretty hard customer; and that he had been almost too hard for any one with whom he had had any thing to do in the country?

Ans. I recollect that Cleveland stated that McGreal was a pretty hard customer. I do not recollect the remark implied in the latter part of the question.

Question by sol. for deft. Did you hear Newell tell Cleveland that Swett had made the arrangement, and he thought it would stand; but

if it did not, and he was swindled, or lost the goods, he would not be any worse off than for plaintiffs to get them, and that he, Newell, would full as leave they should have them as the plaintiffs?

Ans. I heard no such conversation—there was no such conversation; but the conversation that did take place was such as is stated in this my deposition. Witness did not hear Swett's name mentioned in the conversation; did not hear the names of any of the counsel employed by Mr. Newell mentioned specially; did not hear the name of William Tyack or Lindley Murray mentioned; did not hear the word plaintiffs mentioned. Witness was in such a situation, that, if any such thing had been mentioned, he must have heard it, and would have been likely to have remembered it. I think I heard the name of William E. Warren mentioned, I think by Mr. Newell; after Mr. Cleveland had remarked to Newell to be careful, Newell said he would as soon they would have them as that Mr. Warren should; do not recollect that any other remark was made about Warren.

In further answer to the last question by sol. for defts., witness did hear the name of Warren mentioned; I now do recollect that Mr. Newell said he was afraid, that if the goods got into the hands of Warren they would be frittered away in vexatious law suits.

ISAAC D. KNIGHT.

Sworn and subscribed before me, this 5th day of Aug., A. D. 1848.
JOHN S. JONES, *Com'r.*

Cross examination of I. D. Knight.

Witness thinks the discussion in the court room, on the morning of the 10th July, did not last more than one hour; thinks less than one hour; Mr. Merriman spoke, Mr. Swett spoke, and Mr. Sherwood spoke, the judge read his opinion in full; it was written. Witness, Newell, and the sheriff went, immediately after the judge delivered his opinion, to the store; we left the court room together. Witness thinks that the receipt was written in the counting room of Mr. Newell. Witness does not think that the motion to reinstate the injunction, and appoint Mr. Bull as receiver, was discussed or debated, but that it was spoken of; defendant's solicitor objects to all the testimony as to what was discussed or debated in court. Witness does not know the handwriting of the receipt; the witness thinks the receipt was drawn up in the counting room of Newell, because it was fresh when he first saw it there. Witness went down stairs to get some cups to drink wine, and the receipt was drawn, witness thinks, in his absence. The consignment of goods reserved in the transfer of goods to McGreal was, some of it, fine cutlery, pen knives, Bowie knives; was not familiar with the invoice; does not know what all the goods were. Witness knows of no other contract than the paper referred [to,] of date July 10th; saw no other receipt or paper executed than the one above referred to; did not hear of any other.

Question by solicitor for plaintiffs.

Was there a draft drawn by McGreal, payable to witness's order, for the sum of seven hundred and fifty dollars, or any other amount, and in part payment for the goods above referred to?

Answer. There was a draft so drawn, I think, for seven hundred and fifty dollars upon Allen & Hale, and was accepted by them; I think the date was that of the day of sale. The draft was delivered to witness by McGreal. Witness has never endorsed that draft, and has it now in his possession.

Question by solicitor for plaintiff.

For what value was the draft delivered to you by Mr. McGreal?

Answer. Witness understood that the draft was delivered to him in trust, ultimately to be applied to the payment of the debts of the firm of Newell & Co.

Question by solicitor for plaintiffs.

Why was the draft made payable to your order instead of the order of Stewart Newell & Co?

Answer. Witness does not know.

Question by solicitor for plaintiffs.

In case the sale of the goods by Newell to Doss should not be held valid, how was the draft to be disposed of?

Answer. Witness knows of no such arrangement; the draft was to to be applied to the payment of the debts of the firm, and that alone.

Question by solicitor for plaintiffs.

On the 10th July last how much were you indebted to the firm of Stewart Newell & Co.

Answer. Witness does not know; thinks about two hundred and eighty dollars. The account has been neither released or paid. Witness has no immediate means of payment. Witness is a brother-in-law of Stewart Newell.

Question by solicitor for defendant.

What general means have you to pay the above mentioned debt?

Answer. I have some Texas lands. At the time the goods were obtained, my chief resource was a judgment against John H. Illies, for the sum of three thousand dollars, that was thought would be soon realized, but it has since been carried to the supreme court; also the proceeds of my profession.

Question by solicitor for plaintiffs.

You stated that your means to meet the demand were somewhat slim; what do you mean by that?

Answer. I mean my present means are slim; the time the greater part of the debt was contracted I had a drug store.

Question by solicitor for plaintiffs.

What became of this drug store mentioned by you above?

Answer. I sold it to Messrs. Smith & Rhodes. Rhodes I believe was the principal. I purchased it of Mr. Collins and paid for it.

Question by solicitor for plaintiffs.

How much do you owe independent of the debts owing to Stewart Newell & Co.?

Answer. Some two or three hundred dollars; I don't know how much.

J. D. KNIGHT.

Sworn to and subscribed before me, this the 5th day of August, A. D. 1848. JOHN S. YOUNG, *Com'r.*

James Webb's examination.

The land on the Navedad, situated as the one exhibited to me, is estimated at from one to one and a half dollars per acre. The land spoken of is the one patented to John D. Ragsdale. The value of lands differ very much, water, timber, &c., affecting the value. The estimate of the general value of land is made in accordance with the sales of land usually made; it is, perhaps, more than could be obtained in cash. I know nothing of the tract of land, or of the lands in the immediate neighborhood of it. My estimate of the lands on the Navedad I wish to apply to the lands situated in Fayette county. I am of the opinion that the land lies some eighty or one hundred miles off the coast. I would estimate the rolling lands high up the river, as I suppose this tract is, as of more value than the flat lands of bay prairie, yet some of the lands on or near the coast are of much greater value than those above.

I know nothing of the quality of the lands lying southwest of San Antonio, only from representation. They are usually represented as fertile, but with a scarcity of timber. I can form no idea how much the land in that district could be sold for from the description usually given of the lands of that district. I should not think fifty cents an acre too high a price. No located and patented lands are estimated at less than fifty cents per acre within my knowledge. The lands situated near the junction of the Navisoto with the Brazos are generally fine. I would estimate lands lying on the Brazos and Navisoto bottoms as good as any other lands, and would estimate them generally at not less than three dollars per acre.

Cross examination of James Webb.

It is generally almost an impossibility to effect sales of lands for cash. I do not know of a single sale of land being made within the twelve months last past for cash, yet some lands at reduced prices can no doubt be sold for cash.

Question by solicitor for plaintiffs. On the supposition that you had seven thousand seven hundred and fifty dollars to raise, how much land of the description of the land referred to would it require to raise that amount in *in* some three or four months? (Objected to as irrelevant, and as calling for the opinions *and opinions* of the witness.)

Answer. It is my impression that it would be exceedingly difficult to raise that amount of money by the sale of land situated in the upper

country. The impression is based upon the present condition of the resources of the people of Texas.

Question by solicitor for plaintiffs. Is not a great portion of Texas now in market? (Objected to as irrelevant.)

Answer. I cannot say that such is the case. My impression is, that a large majority of the titled land in Texas could be bought, if purchasers could be found.

Question. What is the lowest price that good farming land can be bought for cash, in the neighborhood of the lands above referred to?

Answer. I know of no cash sales. I cannot say what lands can be bought for in cash; when lands are sold and paid for in other property, they have generally been sold for about the estimated value mentioned in my direct answers.

Question. Is it your opinion that these lands would be available to any considerable extent in raising the sum of seven thousand seven hundred and fifty-dollars? (Objected to same grounds as foregoing question.)

[Answer.] My opinion is, that they would not be at the present time in this country; do not know whether they would or would not be elsewhere.

Re-examined.

[Answer.] I have not been extensively engaged in the purchase and sale of land, but have both bought and sold land. The sales of lands are usually made by those who have more than they require for their own use, and are made to those who intend to occupy it and upon credit. So large a sum of money as seven or eight thousand dollars would be very difficult to raise upon property in that part of the country with which I am acquainted. I know nothing of the commercial interests of the country, and the answer is intended not to apply to them.

Question by solicitor for defendants. Do you know of any man, or any place in Texas from whom, or in which, seven or eight thousand dollars in cash could be raised on the sale of a broken store of goods?

Answer. Personally I do not know any man in Texas from whom that sum of money could be raised in cash, though I think it probable that there are such men in the country, and particularly about the commercial cities. With regard to the inducements to advance that sum of money upon a broken stock of goods, I know nothing.

JAMES WEBB.

Sworn to and subscribed before me, this the 7th day of August, A. D. 1848.

JOHN S. JONES, *Adm'r.*

Direct examination of Henry B. Andrews.

I am acquainted with the lands and the value of lands in Brazoria

county, and when within eight or nine miles of Brazoria, and west of the Bernard, I would estimate lands at from three to five dollars per acre. From representations of others as to the character of the lands west of San Antonio, I would estimate lands situated upon streams at from fifty cents to one dollar and fifty cents per acre. The lands situated within 8 or 9 miles of Brazoria and on the Bernard are of much the same value.

Cross examination.

I do not know that land situated on the Bernard could or could not have been sold for cash on the tenth day of July. I know Stephen W. Doss; I think I have known him eight or ten years; for the last seven years Mr. Doss has not been much in Texas, and only on visits. Since he came to Texas last, he has been here some, I think, about nine months; but I am not positive.

Question by solicitor for plaintiffs. What apparent or visible means had Mr. Doss on about the tenth day of July last?

Mr. Doss appears by the records of Brazoria county to have some property, the value or amount of which I do not know; I have access to the records; he appeared to have plenty of money; I don't know how much; he offered to lend me one hundred dollars, but I did not need it, saw him have plenty of money; I feel satisfied more than one hundred dollars, but do not actually know. The general opinion is that Mr. Doss is not a man of considerable or extensive means. I have understood that since his last return to Texas he has been working for Mills and McNeill as a cooper. I do not know that he was ever previous to the 10th July last engaged in merchandising. I have never seen him engaged in any regular business until his last return to Texas, nor did I know he was a cooper.

HENRY B. ANDREWS.

Sworn to and subscribed before me this the 7th day of August, A. D. 1848. JOHN S. JONES, *Com'r.*

Direct examination of Charles Glaivecke.

I have resided in Houston from 1837 up to within the last five months; I have some knowledge of the character and value of lands in the vicinity of Houston, and have bought and sold. I written out many transfers of lands in the neighborhood. I would estimate timbered lands at about five dollars per acre, if it is all timbered, and not more than one or two miles from the capitol.

Cross examined.

I would suppose that it is situated some two or three miles from Buffalo bayou. I don't know whether the land is, or is not, timbered. If it is prairie land I would estimate it at fifty cents per acre.

CHAS. J. GLAIVECKE.

Sworn to and subscribed before me this 7th August, A. D. 1848.
JOHN S. JONES, *Com'r.*

Horace Baldwin.

I know the Ingraham tract of land on the outer or western Hamsburgh road, and at the nearest point about one and a quarter miles from Buffalo bayou, and about one and three quarters or two miles from the old capitol. My impression is that the land is about half timber and half prairie. There is a skirt of timber runs through it. I would estimate the land at about five dollars per acre.

H. BALDWIN.

Cross examined.

I consider the above estimate a fair cash valuation about the tenth of July. I have sold land within the last five or six weeks situated on Buffalo bayou, and near to Houston, at twenty dollars per acre, on eight months time. The prairie on each side of the timber runs through the Ingraham tract; was improved; a cow pen or pasture was enclosed the south side of the timber, and on the north side there was a field; don't know that the tract of land, above referred to, ever belonged to David Russell, or to whom it now belongs.

H. BALDWIN.

Sworn to and subscribed before me this 7th August, A. D. 1848.

JOHN S. JONES, *Com'r.*

Phineas G. Merritt examined.

I think that on the 10th of July last, at about 5 o'clock, p. m., I went to the store of Stewart Newell & Co.; the doors were open; saw Mr. McGreal and Mr. Dockerell, Mr. Frosh and Mr. Leuder, clerk of Mr. Frosh, and I think one or two laborers. Mr. Bremond, I think, came in whilst I was there. I remained in the store a half hour or more. I learned, about the latter part of my stay, that Mr. Frosh was shipping the goods; some of them were put on a dray; do not know where they were being shipped to. I heard from McGreal and Frosh that McGreal's brother-in-law had purchased the goods; I think the name of the purchaser was Doss. I recollect McGreal's telling me the terms of the purchase. McGreal stated that he paid two thousand dollars in cash, and some lands, with some notes and securities, amounting to the sum of eleven thousand seven hundred and fifty-three dollars, I think. It struck me the price was large. Mr. Newell told me the New York cost was about ten thousand dollars. McGreal stated that the purchase price was 15 per cent. above the cost in New York. I went to the store to purchase the goods, and was authorized to offer eight thousand dollars in good securities; the offer was made supposing the invoice to be correct, and was made for the entire stock. The invoice book was handed me by McGreal. I had been in the store frequently, and had looked through the stock; I, on that day, examined the stock; I went round the store with McGreal to see the character of the goods before I made the offer; I came to the conclusion that a large

portion of the goods were cotton, and were purchased some nine or ten months ago, and previous to the decline of cottons and cotton goods. Cotton and cotton goods have declined some forty or fifty per cent. since the purchase of the goods by Newell & Co. I consider the stock worth about thirty-three per cent. less than the invoice price; those, with other reasons, induced me to make the offer of eight thousand dollars. The embarrassed state of the country, and the fact that the stock was broken, or not well assorted, together with the decline in the value of cottons and cotton goods, influenced me in offering less than invoice cost. From all the above reasons, and upon examination of the stock, I still consider my offer of eight thousand dollars a fair one. I have been recently engaged in merchandising and have been a large dealer, and am well acquainted with the business and the value of such goods. The offer was eight thousand dollars in securities on time. I would estimate lands on the Bernard river, within nine or ten miles of Brazoria, at from three to five dollars. I make my estimate from information and belief. I have understood that a tract of land was sold at four dollars per acre; the land was situated on the Bernard. The sale was for cash, and the tract contained a half league. I consider the patented lands worth at least one dollar per acre, but lands cannot be sold at present; there is no demand for them. I deem land in Texas worth as much as in any of the other States; the minimum Government price being one and a quarter dollar. I have sold large quantities of land at one dollar per acre in taking up my own paper. Some of the New York merchants who hold my notes refuse to take lands at that price; money is scarce, very, in Texas at this time; it is difficult to sell goods or any thing else for cash now. The rate of interest demanded now by lenders being ten per cent. per month.

P. G. MERRETT.

Sworn to and subscribed before me this 7th August, A. D. 1848.
JOHN S. JONES.

Cross examined.

McGreal refused my offer for the goods, because he could not make any thing at it, and McGreal stated that I must advance upon his purchase price, else he would not sell.

P. G. MERRETT.

Sworn to and subscribed before me, this 7th August, A. D. 1848.
JOHN S. JONES, *Com'r.*

Direct examination of A. P. Thompson.

I know the tract of land sold by McGreal to Mr. Newell. It contains 177 acres; it is a mile from the old capitol. I refused to take five dollars per acre for the tract of land. Mr. McGreal requested me to sell it for

him. I refused the price in cash and negro property, because I thought it too low. The land is nearly all timbered. I never was all over the tract. I have sold lands adjoining the Houston tract, no better than the above tract, at from (and untimbered) fifty, seventy-five, and an hundred dollars per acre. I consider the tract above referred to, to be worth thirty dollars per acre, and if sold in acre tracts, I think fifty dollars per acre can be realized from it. The Sam. Williams tract lies between it and the bayou.

A. P. THOMPSON.

Sworn to and subscribed before me, this 7th day of August, A. D. 1848. JOHN S. JONES, *Com'r.*

Cross examined.

I never had any interest in any of the lands sold by McGreal to Newell; no part of the proceeds of sale were to come to me. The surveyor who surveyed the tract of land represents it at one mile from the capitol, in the field notes. I believe the land adjoins the Williams tract.

A. P. THOMPSON.

Sworn to and subscribed before me, this 7th day of August, A. D. 1848. JOHN S. JONES, *Com'r.*

Read in evidence at the hearing by defendants.

The President of the United States, to Robert J. Townes, greeting:

Know ye, that I, in consequence of your prudence and fidelity, have appointed and do by these presents give unto you full power and authority diligently to examine all witnesses whatsoever, upon certain interrogatories and cross interrogatories to be exhibited to you in a cause now depending and at issue in chancery, in the district court of the United States for the district of Texas, wherein William Tyack and Lindley Murray are complainants, and S. Newell and Stephen W. Doss are defendants; and therefore I command that you do, at certain days and places to be appointed for that purpose, cause the witnesses named in the title to said interrogatories, or such of them as shall be delivered to you, to come before you, and then and there examine them apart upon the said interrogatories, either on their respective corporal oaths, taken before you upon the holy evangelists, or, in case of Quakers, upon their solemn affirmation and declaration; or in such other solemn manner as may be authorized by law; and that you do take such their examination, and reduce them into writing; and when you shall have so taken them you are to send the same to the clerk of the above named court without delay whatsoever; it shall be closed up and under your seal distinctly and plainly set, together with the said interrogatories and cross interrogatories, and this writ; and I further command you, that before you act in, or be present at, the swearing or

examining any witness or witnesses, you do take and subscribe the oath specified in the schedule hereunto annexed before a commissioner of the United States, or a judge of some court of record.

Witness the honorable John C. Watrous, judge of the district court of the United States, for the district of *of* Texas, and seal of said court, this third day of November, A. D. 1849.

[SEAL.] JAMES LOVE, *Clerk*,
By A. M. HUGHES,
Deputy Clerk.

I will, according [to] the best of my skill and knowledge, truly, faithfully, and without partiality to any or either of the parties in this cause, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the commission annexed upon the interrogatories and cross interrogatories delivered to me, and I will not publish, disclose, or make known to any person or persons whatsoever, the contents of all or any of the depositions of the witnesses, or any of them, to be taken by me, until publication shall pass pursuant to some general or special order of the court wherein the same are taken. So help me God.

R. J. TOWNES.

Subscribed and sworn to, this 10th day of November, A. D. 1849, before me.

JOS. C. MEGGINSON,
Judge, 1*st judicial district.*

In the district court of the United States, in and for the district and State of Texas, between—

WM. TYACK and L. Murray
and
S. NEWELL and S. W. Doss. } In equity.

Interrogatories to be propounded to Peter MacGreal, esqr., and to Mr. Jarvis Dockrill, both residents of Brazoria county, respectively, to be produced and examined as witnesses for the defendants in the above entitled cause, before Robert J. Townes, esqr., commissioner of the said honorable court to take depositions, &c., for the county of Brazoria, or before any other commissioner of said court competent to take effect.

Interrogatory 1st. Are you acquainted with the respective parties in the above cause; when, where, and how long have you known them?

Interrogatory 2d. Did you ever act as agent of the defendant, Stephen W. Doss? If you did, state how long, and the extent of your powers relative to the matter in issue in this cause.

Interrogatory 3d. As the agent of said party, Doss, did you ever make any purchases of goods of Messrs. Stewart Newell & Co., of Galveston? If yea, state when such purchases were made, its terms,

&c.; when and where the goods were delivered; to whom; in whose presence; by whom; in whose possession they were when so delivered.

Interrogatory 4th. How long did these goods remain in your possession prior to their being taken possession of by the receiver in this cause?

Interrogatory 5th. In what manner were they taken by the receiver; was any demand made of you by the receiver; how was the store in which the goods were entered by the receiver?

Interrogatory 6th. In the purchase of Newell & Co., was there or not any condition or stipulation by which any interest whatever in the goods bought was reserved in favor of Newell or Newell & Co., or any other person, or was the sale absolute and unconditional?

Interrogatory 7th. Are you acquainted with the value of such articles as composed the bulk of the goods so purchased, and have you dealt much in such articles? If yea, state whether or not the price paid for them was adequate or inadequate; above or below what could of others have been obtained for them at that time. If you know of any offers made by others for the same stock of goods, state the amount of said offers, and by whom made.

Interrogatory 8th. Are you acquainted with the course of commerce in Texas, relative to the sales of imported goods? If yea, state whether it is usual or unusual, frequent or infrequent, for importers to receive land in part payment for merchandise. Speak to the best of your knowledge and belief, with the grounds and reasons of such belief.

Interrogatory 9th. Were any portion of said goods shipped from Galveston for any other point of trade? If aye, state by whom they were shipped; to whom assigned; for whose account, and at whose risk, and charges.

Interrogatory 10th. State whether or not you ever read, or heard read, the articles of copartnership between Stewart Newell, William Tyack, and Lindley Murray, prior to your purchase of the stock of goods mentioned above.

Interrogatory 11th. State what you know of the means or pecuniary circumstances of the said Stephen W. Doss relative to his ability to make the purchase of a stock of goods as above, and in the record of this suit spoken of.

Interrogatory 12th. Have you since the said purchase conversed with either or both the complainants in this cause relative to the said purchase; if aye, state when and where the said conversations were held, and the purport of them. Set them out fully. In those conversations did the said complainants, both or either of them, approve or disapprove of the sale which their partner, the defendant, Newell, had made to the defendant Doss? State as near as you can their language relative thereto; were they, or were they not, aware that lands formed a part of the consideration for the sale? State whether or not they made any complaint of their partner, Newell, having defrauded them in the matter, or exceeded his powers as co-partner, or whether they express themselves content and satisfied with what he had done.

Interrogatory 13th. Have you seen a certain instrument on file in this cause, filed during the last term of the court, by which the complainant, Murray, ratifies and confirms a certain revocation of a power of attorney before given by him to one William E. Warren, some time about July, 1848; and also a statement under the hand and seal of said Warren, to which you were a subscribing witness, also on file; and do you know the contents of these instruments? If aye, state all you know relative to the execution of these two instruments, and the circumstances and inducements under which they were executed. State whether or not yourself, or any one else to your knowledge, made any representations to the said Murray to induce him to execute said instruments; if aye, state what those representations were.

Interrogatory 14th. Had you or not any conversations with the complainants, or either of them, touching any indebtedness between Newell and them, or either of them; or relative to the amount of capital either of them had paid in? If aye, state with which of them these conversations were, the substance of the conversations, on which side the indebtness was said to be, &c., &c., material to this pending controversy.

Interrogatory 15th. State whether or not it is usual or unusual, frequent or infrequent, in Texas for merchants, co-partners, to sell an entire stock of goods and still continue business without a dissolution on that account.

Interrogatory 16th. State whether or not in your conversations with the complainants, or either of them, any thing was said by them, or either of them, relative to the scope and objects for which their co-partnership was formed; if aye, state what those conversations were, and by whom, setting forth all they, or either of them, said on this subject; state whether or not, according to their said declarations, they represented the said co-partnership as primary or accessary to some other enterprise or speculation; if the latter, set out of what nature, and generally all they, or either of them, said on this subject material to the issue in this cause.

Interrogatory 17th. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

All the above interrogatories to be propounded to Peter MacGreal, esq. The 1st, 8th, 9th, 11th, 15th, and last only of the foregoing to to be propounded to Jarvis Dockrille. The following additional interrogatories to be propounded to Jarvis Dockrill.

1st. State all you know relative to a shipment of goods made by Peter MacGreal, esquire, as agent for S. W. Doss, from Galveston to Brazoria, by the sloop Alamo, commanded by Capt. Peske; state whether or not you assisted in packing and sending aboard the said goods; if aye, state whether the same was done openly or secret; who *made* in the store with you while packing and sending aboard; whether

any or many persons came in and out of the store in which the goods were, while you were packing; if you recollect any such persons, name them. Was or was not Mr. Bremond, of Houston, one of those persons; had you any interest in said goods; did you or not offer to sell any of them to Mr. Bremond cheap, if he should go to Brazoria; if aye, why did you so offer, and what was the reason or motive of what you said to him? State fully and particularly all you know relative to the shipment of said goods, or their purchase, ownership, &c., material to either party in this cause, as fully as if particularly interrogated to each fact.

2d. In whose name were the dray receipts taken, and why? Is it usual or unusual, in shipments from Galveston for Brazoria, to take dray receipts only, or are bills of lading generally required?

3d. At what hour did the vessel sail, and was the wind fair or foul for her voyage?

4th. Answer such of the foregoing interrogatories not specified as your knowledge enables you, as well as the seventeenth and last of the foregoing interrogatories.

A. P. THOMPSON,
O. F. JOHNSON,
For defendant, Doss.

UNITED STATES DISTRICT COURT,
District of Texas.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss.

And now this day, to wit, the 30th day of October, A. D. 1849, come the complainants and file exceptions to the interrogatories on the part of the defendants, or either of them, to be propounded to Peter MacGreal, and do object to the same, and to the answers thereto, because it appears by the records, and proceedings, and proof in this cause, that the said Peter MacGreal is interested in the event of this cause, and is not a competent witness for the defendants on record.

MERRIMAN, SHERWOOD & WAGNER,
Solicitors and counsel for complainant.

Cross interrogatories to be propounded to Jarvis Dockrill, a witness proposed to be examined on the part of the defendants, under a commission to be issued in the above entitled cause.

1st interrogatory. Are you the brother-in-law of Stephen W. Doss?

2d. Is the defendant, Stephen W. Doss, gone to California; and if so, when, and which way did he go?

3d. Have you advanced any money, means, or funds to Peter MacGreal, or to Peter MacGreal as the agent of Stephen W. Doss, directly or indirectly, as connected with the subject matter of this suit, or in

the payment of any counsel fees as connected with the litigation of the property of Stewart Newell & Co.? If so, directly or indirectly, state what, how much, and under what circumstances.

4th. *Was* you present at the time of the shipment of the goods on board the sloop *Adams*, and *was* you engaged in the shipment of the same.

5th. Did you at that time have a conversation with Paul Bremond?

MERRIMAN, SHERWOOD & WAGNER,
Solicitors and counsel for complainants.

A true copy of the interrogatories and cross interrogatories filed in this case on the 24th October, 1849.

JAMES LOVE, *Clerk*,
By A. M. HUGHES, *Dep'y Clerk.*

Deposition of Peter MacGreal, a witness in the county of Brazoria residing, produced, sworn, and examined on the tenth day of November, in the year of our Lord one thousand eight hundred and forty-nine, at Brazoria, in the district and State of Texas, by virtue of a commission issuing out of the district court of the United States, for the district of Texas, in chancery, to me directed for the examination of witnesses in a cause therein depending in chancery between William Tyack and Lindley Murray as complainants, and Stewart Newell and Stephen W. Doss, defendants; I, the acting commissioner under the said commission, having first duly taken the oath annexed to the said commission, according to the tenor and effect thereof, and as thereby directed on the part and behalf of the said defendants, you shall true answers make to all such questions as shall be asked of you on these interrogatories, without favor, affection, or partiality, and therein you shall speak the truth, the whole truth, and nothing but the truth, so help you God.

PETER MacGREAL.

Peter MacGreal, of the county of Brazoria and State of Texas, aged thirty-three years, a witness produced, sworn, and examined on the part and behalf of the said defendants, deposeth and saith as follows:

In reply to the first interrogatory to him addressed, he answers and says, that he is acquainted with the parties to this suit, viz., William Tyack and Lindley Murray, the complainants, and Stewart Newell and Stephen W. Doss, the defendants; Tyack and Murray he has known since the tenth of July, 1849, and knew them only in the city of New York; Newell he has known since 1837, at which time he met said Newell in Texas, acting as consul of the United States government, and has frequently since seen said Newell in Texas, in New Orleans, New York, and Philadelphia; Doss he has known since 1834, in New Orleans, Mississippi, and Texas.

To the second interrogatory he answers and says: That he has acted as the agent of the said defendant Doss in many transactions to a large

amount, in and since the year of our Lord one thousand eight hundred and thirty-nine; that he has bought and sold real estate and negroes, for and on account of said Doss, since that year to an amount exceeding twenty-six thousand dollars; all of which deponent did with the sanction, approbation, and concurrence of said Doss; and deponent has also bought and sold as agent of said Doss a large amount of personal property, at various periods, amounting to over fifteen thousand dollars, since 1839; and he is now his agent.

To the third interrogatory he answers and says: That, as the agent of the said Doss, and at his request, he purchased of Stewart Newell and Company, of Galveston, the stock of goods, amounting, by said Newell & Co., at about ten thousand dollars, and from the examination of the goods and invoices, and also computing freight and charges, on behalf of the said Doss, he bought the same for eleven thousand *dollars* seven hundred and fifty-three dollars, or thereabouts, on the 10th day of July, A. D. 1848, at about the hour of half past eleven, a. m., or twelve o'clock, m. The conditions of the sale from Newell & Co. were, that I, on behalf of said Doss, should pay two thousand dollars in cash, two thousand dollars in good notes, judgments, liens, or securities, guarantied by deponent, and seven thousand seven hundred and fifty-three dollars, or thereabouts, in good lands, the titles to which deponent was also to guaranty to said Newell & Co. The two thousand dollars in judgments, notes, liens, securities, or mortgages, and the titles and transfers to lands, as agreed upon, were all to be delivered and perfected within thirty days from the day of said sale.

I gave my written obligations to Newell & Co. for the completion of the contracts before mentioned. The goods, invoices, and inventory book of all the goods were delivered to deponent, for said Doss, at about half past eleven o'clock, a. m., or twelve o'clock m., in the presence of Doctor I. D. Knight, Col. John Warren, and two or three other gentlemen, whose names are not now recollected. The goods were in the brick house near Messrs. Doswell & Co., and deponent took possession of them after the purchase, as before stated, for Mr. Doss, and took the key of the store, all which in presence of the persons before named; the same were delivered by Stewart Newell, in whose possession, as owner, all of said goods were, at and before the time of said sale, in behalf of himself and his co-partners, as the firm of Stewart Newell & Co.

To the fourth interrogatory he answers and says: That the said goods were in his possession from the time before named in his preceding answer until some time in the morning of the eleventh day of July, 1848, when the receiver, N. B. Yard, informed deponent that he, Yard, by order of the United States court, had taken possession of part of said goods, the said Yard having forced open the store in which a part of said goods were; the said goods were in possession of deponent over twenty hours, at least, before they could have been seized or taken by said receiver.

To the fifth interrogatory he answers and says: That the goods in

the store before referred to were forcibly taken possession of by the receiver, as before stated, and that the greater part of the said goods having been shipped to the town of Brazoria, on a vessel called the "sloop Alamo," now in the Brazos river, also taken possession of by said Yard and a deputy marshal of the district of Texas. The store was carefully fastened, secured, and locked by this deponent, and others in his presence, on the night of July 10th, 1848; no demand or notice whatever was made or given by the receiver before he acted as aforesaid.

To the sixth interrogatory he answers and says: That there was no condition or stipulation whatever reserved by said Newell & Co., or said Newell, or any other person, of any interest or claim in and to said goods. The sale by Newell & Co., and the purchase of deponent for the defendant, S. W. Doss, was unconditional and absolute, and without reservation in any way or form.

To the seventh interrogatory he answers and says: That he is well acquainted with the description of goods, and their value, as purchased from said Newell & Co., and that he has dealt extensively in the same for many years as a merchant in New Orleans, in New York, and Texas; and that the price paid for the said goods has been a full and fair value for the same, and more, deponent now believes, than any other person would have given for the same stock of goods. Mr. P G. Merrit and Mr. Frosh, of Galveston, offered to deponent to buy said goods on the evening of the 10th of July, 1848, but the highest offer they would make for them was about eight thousand dollars; and they thought Mr. Doss had given too much when informed of the amount paid, as before stated.

To the eighth interrogatory he answers and says: That he is acquainted with the course of commerce in this State, relative to the sales of goods, since the early part of the year A. D. 1836, one thousand eight hundred and thirty-six, in which himself and his brother jointly imported about sixty thousand dollars' worth of goods; and it has been neither unusual nor infrequent to sell goods for lands since 1836; deponent has sold and purchased goods for lands, to the amount of over fifty thousand dollars in Texas, since 1836; and he has known of many trades by importers of goods for lands, the "principle staple of Texas," as it is termed, within the last ten or twelve years; Mr. Frosh, R. P. Jones, J. H. Illies, F. W. Muller, P. G. Merrit, and many other merchants of Galveston, are all well acquainted with these facts, and with all these gentlemen, as importers of goods, deponent has purchased for lands.

To the ninth interrogatory he answers and says: That the goods so purchased, or a large portion of them, were shipped from Galveston to Brazoria, for which place they were bought; they were shipped by Lawrence Frosh, a merchant of Galveston, consigned to the defendant Doss, at his risk, for his account and charge.

To the tenth interrogatory he answers and says: That he has never read, nor has he ever heard read, the articles of co-partnership between

Stewart Newell, William Tyack, and Lindley Murray, previous to the purchase of said goods, on the 10th of July, 1848.

To the eleventh interrogatory he answers and says: That he was indebted to the said Doss, previous to the said purchase, in a considerable sum of money, about forty-seven hundred dollars, received by deponent for said Doss, and by him invested in the purchase of lands in Texas, and which deponent was anxious to pay, because Doss was urgent therefor; besides this, deponent knew of other means of the said Doss, which, in fact, were in a great measure controlled by deponent, in a very valuable property and estate in Alabama, and also lands of said Doss in Texas, and claims upon the administration of his uncle's estate in Mississippi, so that I thought by the purchase before named, and as it was at the desire of Mr. Doss, I could easily pay him honorably my debt, and obtain additional and more extensive accommodations from him. At this time he complained much of ill health, and was rather urgent about a repayment from me, either in money, or in something that would produce an equivalent.

To the twelfth interrogatory he answers and says: That in July last he had frequent conversations with the said complainants in the city of New York, to wit, with the said Tyack at his residence, and with Murray at his counting room, and they both frequently spoke of the said purchase without any sort of reservation; and the said Tyack and Murray, frequently, in such conversations, expressed themselves perfectly satisfied with the said sale to S. W. Doss, the defendant, and that it was proper and just; and that, if it had not been made, they would have been utterly ruined; that the goods being mostly winter goods, and laid in in the season before, would have remained on hand, been unseasonable, out of fashion, and would have to be sacrificed; and that the conduct of Mr. William E. Warren to stop the concern in Galveston was wholly in violation of their understanding with Mr. Warren, contrary to their wishes, and in violation of instructions from Tyack to Mr. Warren. Tyack was extremely severe and harsh in his remarks upon Warren, and his course in Galveston; neither Mr. Tyack nor Murray intimated the slightest doubt of the prudence or propriety of the sale made by their co-partner, Mr. Newell, but, on the contrary, said it was the best, and was a most fortunate sale. Mr. Tyack and Mr. Murray both thought that they could easily replace the goods with the lands alone received by them for the goods; they were fully aware of the whole transaction between Newell & Co. and Mr. Doss touching the sale and the consideration given; both of the complainants repeatedly stated that they had the utmost confidence in Mr. Newell and in his judgment; and that the sole object of the concern in Galveston was to supervise and promote the "Galveston city company's" interest, and not from any mercantile reward or expectation; that a stock company had been formed by them in New York on this subject, in connexion with any large land speculations, and in connexion with the "Wilson Land Company," in which both complainants were stock holders and officers.

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To the eighth interrogatory he answers and says: That he is acquainted with the course of commerce in this State, relative to the sales of goods, since the early part of the year A. D. 1836, one thousand eight hundred and thirty-six, in which himself and his brother jointly imported about sixty thousand dollars' worth of goods; and it has been neither unusual nor infrequent to sell goods for lands since 1836; deponent has sold and purchased goods for lands, to the amount of over fifty thousand dollars in Texas, since 1836; and he has known of many trades by importers of goods for lands, the "principle staple of Texas," as it is termed, within the last ten or twelve years; Mr. Frosh, R. P. Jones, J. H. Illies, F. W. Muller, P. G. Merrit, and many other merchants of Galveston, are all well acquainted with these facts, and with all these gentlemen, as importers of goods, deponent has purchased for lands.

To the ninth interrogatory he answers and says: That the goods so purchased, or a large portion of them, were shipped from Galveston to Brazoria, for which place they were bought; they were shipped by Lawrence Frosh, a merchant of Galveston, consigned to the defendant Doss, at his risk, for his account and charge.

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To the thirteenth interrogatory he answers and says: That he was present when the instruments of writing, viz., the confirmation of the revocation of the power of attorney to William E. Warren, of (May) 1848, (as deponent thinks is the month,) given to said Warren by the complainants, and a statement given by said Murray of his knowledge and opinion touching the said defendant's conduct; the first to confirm a former revocation of the power of attorney given by Murray; and the latter, or statement, was to show that Murray concurred in all the acts of Newell, and had the utmost confidence in him, and was perfectly satisfied with his course, and with, as deponent believes, the sale to Doss; the instruments were, as he believes, witnessed by him, and were fully and voluntarily given, without any sort of inducement or promise, directly or indirectly, known to or suspected by defendant; and he believes that no kind of representation whatever was made to the said attorney to procure the same, but that he gave the said confirmation of revocation and abatement, as he led deponent to believe, from conscientious motives alone. Witness believes that the confirmation may have, in conversation with said Murray, been suggested by deponent, but deponent never by himself, or through any other person, directly or indirectly, held out or offered any inducement whatever to said Murray for these papers.

To the fourteenth interrogatory he answers and says: That he distinctly understood from the complainants that but about three thousand dollars of capital had ever been paid in by them, and that by Tyack; his conversations on these points were with both—Murray and Tyack; they expected to realize from the "Galveston City Company Stock" more than sufficient to make up the full capital, and Newell had left with Tyack about seven thousand dollars worth of property, available at the time; and Murray said, that Tyack had used all of that, and hence he insisted that Tyack was owing Murray that sum, and not the concern.

To the fifteenth interrogatory he answers and says: That he has known of several instances where concerns have sold out, renewed again, or gone into some other business, without a dissolution of partnership; in fact such occurrences are frequent in Texas.

To the sixteenth interrogatory he answers and says: That he had heard repeatedly from both the complainants that the object mainly and principally of the co-partnership was, the "Galveston City Company," "Wilson Land Company," and other real estate and stock interests, some in connexion with Texas, as it was a new and growing State; and that the mercantile speculation on the goods sent out to Galveston were mainly designed as accessory to the objects of the association, in the way of aiding Mr. Newell to advance their interest in Galveston, under the firm belief that the stock would pay four fold for anything sent to Texas in the way of goods.

To the seventeenth interrogatory he answers and says: That both Tyack and Murray were indignant at the commencement and prosecution of this suit, and said that it was wholly unauthorized by them;

Murray said that so soon as he had heard of Warren's conduct he had revoked the power of attorney in May, 1848, given by them; Tyack stated that he had been deceived by Warren and by Mr. Sherwood, his, Warren's counsel, and that after a severe fit of illness he had thought over the whole matter, ascertained his errors, and procured a letter written in March by one of his men, which he sent to Judge Swett in order to dismiss the suit, and place the odium of the whole transaction upon the right parties. Mr. Tyack in conjunction with Mr. Murray, desiring to renew or reinstate some relations with the principal proprietors and stockholders of the "Galveston City Company," determined upon sending out an agent to Texas in July last; and for this object they selected a Mr. Andrews; both of them authorized and empowered him to act for them; especially in settling and absolutely dismissing this suit, and even if needful, to employ counsel for that purpose. I am sure that Capt. Tyack gave him a power of attorney, because I witnessed it, and think he gave him one to arrange with Edgar in relation to a claim on "Galveston city stock." Mr. Andrews was present at conversations between Mr. Tyack, Murray, and myself; he appeared to enjoy the confidence of both these gentlemen: at such conversations I often met Mr. Newell, between whom and the said parties the most intimate and friendly relations appeared to subsist; Mr. Tyack and Mr. Newell, in New York and Philadelphia, are reputed very wealthy, so far as I could hear and discover during a short visit; Mr. Murray is also apparently in affluent circumstances, although more equivocally so than the others, and this probably because a young man; all of these persons are doing business in the city of New York.

The payment for the goods to Newell & Co. has long since been made, except a balance due upon a draft in favor of J. D. Knight on Messrs. Allen and Hale, which has been enjoined; this was all done before any injunction was obtained from this court, or any steps taken to suspend or prevent the payments or completion of the contracts between Messrs. Newell & Co. and Mr. Doss.

The payments were as follows, twelve hundred dollars paid by order of Newell & Co., cash, to Messrs. Franklin, Jones, and Judge Swett; about forty-five dollars to Mr. Sauters by order of Newell & Co.; one hundred dollars to I. D. Knight, and the balance an acceptance for the remainder of two thousand dollars for cash acceptance in favor of I. D. Knight; also transfer of selected claim in Brazoria, a judgment against William T. Crook for two thousand dollars; also deed and patent for 600 acres of land in Brazoria, about eight miles from this town; also deeds for one-half of a league of land on the Navisoto, east of the Brazos; half of M. Kegan's head right, and bought of R. Mills; also deeds and patent for a half league of land on the Navidad, being half of the head right league of John D. Ragsdale; also deeds for $177\frac{5}{6}$ acres, adjoining the city of Houston; also 1,280 acres of land patented and deeded in conformity to the agreement with said Newell & Co. at the time of the said purchase. The deeds to the lands

were required by said Newell in his own name, because he said it removed all difficulty in the way of a transfer of the same, should favorable opportunities for a sale be presented. The purchase of the goods before referred to was fairly, openly, and publicly made of the said Newell & Co., at their store in Galveston city, and fair and adequate prices were given for the goods in good faith, and without any sort of condition or private understanding, and for the use and benefit and at the instance of said Doss. Deponent and Doss have no understanding or agreement whatever touching the same, or the proceeds thereof. I had in my control and possession means and property of Mr. Doss, at the time of the sale, over and above the amount given for the goods, as before stated; and these I have long since applied. Mr. Doss has become dissatisfied with the course of my operations in this affair, and he and myself have fully closed all business transactions. I am in no way or form, directly or indirectly, interested in the result of the cause. The proceeds, if any, have long since been assigned by Mr. Doss to other parties, saving and excepting the fees of his counsel, and expenses incident to the defence of the cause, in which I am not interested, and by or from which I cannot lose or gain.

PETER MacGREAL.

And I, Robert J. Townes, commissioner as aforesaid, do hereby certify, that I duly swore the said witness, before examining him, upon the holy evangelists; that he reduced his answers to the several interrogatories to him propounded to writing; that he carefully read the same over; whereupon he signed his name thereto as above written.

In testimony whereof I have hereunto set my hand and affixed my seal at the day and place above mentioned.

R. J. TOWNES, [L. S.]
Commissioner.

Deposition of Jarvis Dockrill, a witness in the county of Brazoria, residing, produced, sworn, and examined on the tenth day of November, in the year of our Lord one thousand eight hundred and forty-nine, at Brazoria, in the district and State of Texas, by virtue of a commission issuing out of the district court of the United States for the district of Texas, in chancery, to me directed, for the examination of witnesses in a cause therein depending in chancery, between William Tyack and Lindley Murray, as complainants, and Stewart Newell and Stephen W. Doss, defendants; I, the acting commissioner under the said commission, according to the tenor and effect thereof, and as thereby directed, on the part and behalf of the said defendants.

You shall true answers make to all such questions as shall be asked of you on these interrogatories, without favor, affection, or partiality, and therein you shall speak the truth, the whole truth, and nothing but the truth. So help you God.

JARVIS DOCKRILL.

Jarvis Dockrill, of the county of Brazoria and State of Texas, aged thirty-eight years, a witness produced, sworn, and examined on the part and behalf of said defendants, deposeth and saith as follows. In reply to the first interrogatory to him addressed, he answers and says, that he has no knowledge of the complainants; that he slightly knew the defendant Newell, and that he has been acquainted with the defendant Doss for many years, in Texas, by casually meeting him.

In reply to the eighth interrogatory he answers and says, that he is well acquainted with the course of commerce and trade in Texas; that he has been nearly all his life engaged in mercantile business. Merchants and importers of goods into Texas frequently sell, exchange, and trade goods, wares, and merchandise for lands lying in Texas; many instances of large tracts of this nature have occurred in Texas, and do still occur to my knowledge; and hence such trades are neither unusual nor infrequent.

In reply to the ninth interrogatory he answers and says, that if the same is made in reference to a purchase of goods made in July, 1848, at Galveston, by Peter MacGreal, as the agent of defendant Doss, from the defendant Doss, then he answers that the greater part of said goods were shipped on board the sloop Alamo, Captain Peske, to said Doss for Brazoria; the sloop was a regular trader between Galveston and the Brazos river; the goods were shipped by Lawrence Frosh, who took the dray receipts for the same; the goods were consigned to Doss.

In reply to the eleventh interrogatory, he answers and says, he does not know the means or pecuniary condition of said Doss, and cannot speak more fully upon this inquiry.

To the fifteenth interrogatory he answers and says, that he has known entire stocks of goods sold out by co-partners in mercantile business, and he has known of no instance where it was made a cause of dissolution, or regarded as a dissolution; partners often sell out entire stocks of goods, and then renew again; and they often change from one branch of business to another; a merchant selling out his and co-partners' whole stock may, with his partner's consent, carry on a commission or an auction business.

In reply to the seventeenth interrogatory he answers and says, that, being at Galveston on business in July, 1848, he was informed by Peter MacGreal of a purchase of goods made by him as agent for Doss. MacGreal showed witness a bill of sale from Stewart Newell & Co. to said Doss for the whole of their stock; the payment, I think, purported to be part in cash, about two thousand dollars; part in security, notes, etc., about two thousand dollars, ($2,000;) and the balance in land, about seven thousand ($7,000) dollars or over. This occurred about the hour of noon, and after dinner, at the request of MacGreal, went to the store of Newell & Co., where the goods were. While there the captain of the Alamo came in and asked for freight, and said his vessel was lying off without anything to carry. MacGreal then requested Lawrence Frosh to superintend the shipping of the whole of the stock of goods to Brazoria to Doss, and a large portion of the goods were shipped: all was

done openly and publicly as any other ordinary business; the doors were open, and various persons were going in and out. The vessel left the same evening for the Brasos. A part of the goods were left in the store, and witness saw the store locked and fastened, and carried the key of the store to Tremont House, in company with MacGreal and several other persons. Next morning witness went with MacGreal to the store and attempted to unlock the door, but found the door had been broken open. Mr. N. B. Yard was in the store. MacGreal asked how he had entered, and who had opened the store. Yard replied that he, Yard, had taken possession as an officer of the United States court, and by order of that court. MacGreal then read to him the bill of sale of the goods from Newell & Co. to Doss, and cautioned him against his liability for damages for his conduct in seizing Doss's goods for another man's; but Mr. Yard stated that William E. Warren had fully indemnified him against loss or damage for his conduct. MacGreal then left the store. Witness thinks that all the dray receipts were taken by Mr. Frosh on small printed tickets. Witness was to have carried the dray tickets to Brazoria for Doss on the following day. At the request of Mr. MacGreal, Doss's witness started from Galveston to Velasco, on his way to Brazoria, the place of the deponent's residence, in order to inform Doss of the occurrence, and to tell him that Yard had taken forcible possession of the balance of the goods in the store, and would likely do so in relation to the goods on the Alamo; when, after reaching Velasco, witness met Mr. Yard and the United States deputy marshal, Hinton, who told deponent that they were in pursuit of the goods shipped on the Alamo. Witness told Yard that the goods belonged to Doss, and also that if the goods had been his property he, Yard, should not touch them. This occurred before Yard or Hinton took possession of the Alamo, or goods; and after this, the next day, N. B. Yard went aboard the Alamo, lying in the Brasos river, and took possession of the goods and vessel, and carried them back to Galveston.

Witness recollects being at the store when the goods were being shipped. L. Frosh and a German, whose name he does not recollect, John R. Spann, M. C. Spann, C. Rossignole, and many others whose names he does not recollect, and many who were not personally known to them, [were there;] he recollects seeing a Mr. Bremond from Houston, who was at that time unknown to witness. Bremond came to the top of the stairs where witness, at the request of Frosh, was aiding in packing and boxing the goods. Bremond made some remarks, not now recollected, and deponent jokingly said, that if any person desired cheap goods or cheap bargains they had better come to Brazoria, or some such remark. Deponent was in no way or manner interested in the goods, nor did he ever pretend or claim any interest in the same. He never offered to sell to any person any of said goods. When he went to the store with Mr. MacGreal as before stated, and having no engagement for the evening, and being familiar with goods and the mode of packing and shipping, he aided Mr. Frosh and those above named in doing

so; and these are all that he can now recollect that would benefit either party to this suit.

To the first additional interrogatory he answers and says, that, for answer to this interrogatory, he refers to his preceding answers; but says there was no secrecy or privacy in regard to any of said transactions.

To the second interrogatory he answers and says, that he believes the dray receipts were taken in the name of Lawrence Frosh as the shipper, because the receipts were printed and more convenient, and because the said Frosh is the largest shipper of goods to Brazoria from Galveston, and because such dray receipts answer all purposes, and save the formality of any bills of lading, the receipts being given by the masters of vessels to the shippers.

To the third interrogatory he answers and says, that he does not know when the vessel sailed, but believes she sailed the 10th of July, 1848, for Brazoria.

To the fourth interrogatory he answers and says, that he knows of nothing more material to the parties than he has already stated.

JARVIS DOCKRILL.

To the first cross interrogatory he answers and says, that he is neither the brother-in-law of, nor in any way related to, the said Doss.

To the second cross interrogatory he answers and says, that he does not know, except by hearsay, any of the matters in this interrogatory inquired about; but the said Doss does not reside, nor has been for several months, in Brazoria. The said Doss has not been a permanent resident in Texas for many years; in fact, since 1842, he has been but twice in Texas, and this is the principal reason why witness cannot speak of his means or whereabouts; but witness has known him as an honest, liberal, social gentleman in his intercourse with him. Doss early in the year 1848 designed merchandising in the town of Brazoria.

To the third cross interrogatory he answers and says, that he has never advanced, nor has he ever been directly or indirectly requested, either by Peter MacGreal or said Doss, or any other person, to advance, any money or means for the payment of counsel fees, or for the payment [of] any other purpose or object directly or indirectly connected with or relating to the subject-matter of this suit, or the litigation of Stewart Newell & Co., or S. W. Doss, or Newell.

To the fourth cross interrogatory he answers and says, that he was present at the shipment of the goods, as before stated, on board the Alamo for Brazoria, and did assist in packing and shipping the same to the defendant, Doss, without any interest or reward whatever.

To the fifth cross interrogatory he answers and says, that he had no conversation with Paul Bremond, except such as may have been heretofore referred to; Bremond was a stranger to him at the time referred to.

JARVIS DOCKRILL.

UNITED STATES OF AMERICA,
District of Texas, State of Texas, Brazoria county.

And I, Robert J. Townes, commissioner as aforesaid, do hereby certify, that I duly swore the said witness, before examining him, upon the holy evangelists; that he reduced his answers to the several interrogatories to writing, to him propounded; that he carefully read the same over; whereupon he signed his name thereto as above written.

In testimony whereof I have hereunto set my hand and affixed my seal, at the day and place above mentioned.

R. J. TOWNES, [L. S.]
Commissioner.

TYACK and Murray
vs.
NEWELL and Doss.

This day came the parties, by their solicitors, and also the jury, who were permitted to disperse on yesterday; and the cause not being finished, by consent of counsel, with the assent of the court, are discharged from rendering their verdict herein until to-morrow.

And afterwards, to wit, on the 11th day of January, A. D. 1850, the following order was entered upon the minutes by order of the court, that is to say:

TYACK and Murray
vs.
NEWELL and Doss.

This day came again the parties, by their solicitors, and also the jury heretofore empannelled in this cause, and who were permitted to disperse on yesterday; and the said cause not being concluded, by consent of the parties, with the assent of the court, are again discharged from rendering their verdict herein until to-morrow.

And afterwards, to wit, on the 14th day of January, A. D. 1850, the following order was made by the court, and entered upon the minutes thereof in words and figures as follows, to wit:

TYACK and Murray
vs.
NEWELL and Doss.

This day came again the parties, by their solicitors, and also the jury heretofore empannelled in this cause, and who are discharged from rendering their verdict herein until to-day; and by consent of the parties, with the assent of the court, are again permitted to disperse until to-morrow morning.

And afterwards, to wit, on the 15th day of January, A. D. 1850, the following order was made in this cause by the court, and entered upon the minutes thereof, in words and figures as follows, that is to say:

TYACK and Murray
vs.
NEWELL and Doss.

This day came the parties, by their solicitors, and the same jury as on yesterday; and the said cause not being concluded, by consent of the parties, with the assent of the court, are permitted to disperse until to-morrow morning.

And afterwards, to wit, on the 16th day of January, A. D. 1850, the following order was entered upon the minutes by order of the court, to wit:

TYACK and Murray
vs.
NEWELL and Doss.

This day came again [the parties,] by their solicitors, and also the same jury as on yesterday, and who were discharged from rendering their verdict herein until to-day; and the cause not being concluded, by consent of parties, with the assent of the court, are permitted to disperse until to-morrow morning.

And afterwards, to wit, on the 17th day of January, A. D. 1850, the following order was made herein, and entered upon the minutes, in words and figures as follows, to wit:

TYACK and Murray
vs.
NEWELL and Doss.

This day came again the parties, by their solicitors, and also the same jury as on yesterday, and who were discharged from rendering their verdict herein until to-day; and the argument of said cause not having yet been concluded, by consent of the parties, with the assent of the court, are permitted to disperse until to-morrow morning.

And afterwards, on the 18th day of January, A. D. 1850, the court made the following order in this cause, that is to say:

TYACK and Murray
vs.
NEWELL and Doss.

This day came again the parties by their solicitors, and also the same jury as on yesterday; and after hearing the argument of counsel and the charge of the court, by consent of the parties with the assent of the court, are discharged from rendering their verdict until to-morrow morning.

And afterwards, to wit, on the 19th day of January, A. D. 1850, the jury heretofore empannelled in this cause rendered their verdict in words and figures as follows, that is to say:

UNITED STATES DISTRICT COURT,
District of Texas.

WILLIAM TYACK & Co.
vs.
STEWART NEWELL and Stephen W. Doss. } In equity.

In this case we, the jury, find the sale fraudulent.

WM. J. BRYAN, *Foreman.*

Whereupon the following entry was made upon the minutes of the court, to wit:

TYACK and Murray
vs.
NEWELL and Doss.

This day came again the same jury, who had heretofore been empannelled in this cause, and who were discharged from rendering their verdict herein until to-day; and after hearing the argument of counsel and the charge of the court, upon their oaths do say: "In this case we, the jury, find the sale fraudulent."

And afterwards, on the 21st day of January, A. D. 1850, the defendants, by their counsel, filed their motion for a new trial in this cause, in words and figures as follows, to wit:

TYACK and Murray
vs.
NEWELL and Doss.

In the district court of the United States, for the district of Texas.
Sur-issue in fact before the jury.

The defendants come and move the court to grant a new trial before a jury for the following reasons, to wit:

1. The jury misunderstood and misconceived the charge of the court in regard to the nature and extent of the issue submitted to them.

2. The verdict was obtained and rendered in consequence of such misunderstanding and misconception of the charge of the court.

3. The jury did not intend to find, and did not suppose they were finding, in and by their verdict, any fraud on the part of Stephen W. Doss, or his agent, Peter MacGreal, in making the purchase of goods referred to in the issue formed and submitted to them by the court.

4. The verdict is against and not warranted by the evidence in the case.

5. The object of the issue being to inform the conscience of the court, the verdict cannot answer this end, if any of the jurors agreed to the verdict, under a mistake of its effects, and of the facts which its finding would imply.

Jan 21st, 1850.

O. F. JOHNSON,
A. P. THOMPSON,
Solicitors for Doss.

And afterwards, on the same day, that is to say, on the 21st day of January, A. D. 1850, Doss, one of the defendants in this cause, filed additional reasons for a new trial therein, as follows, to wit:

TYACK and Murray
vs.
NEWELL and Doss.

Additional reasons for new trial.

6. The court erred in charging the jury.
7. The charge of the court is not clear, and is liable to misconstruction, and misled the jury.
8. The issue as described by the court, and the rules of law as laid down applicable to it, are incorrect and in derogation of the law.

Jan. 21st, 1850.

O. F. JOHNSON,
A. P. THOMPSON,
Solicitors for S. W. Doss.

And afterwards, to wit, on the 25th day of January, A. D. 1850, the defendants in this cause filed the following affidavit in words and figures as follows, to wit:

In the examination of the issue before the jury in the case of Tyack and Murray vs. Newell and Doss, we, the jurors, in our retirement, did not inquire into the right and power of Doss to purchase, nor of the question of fraud on his (Doss's) part; but, only into the right and power of Newell to make that particular sale, for that particular consideration, and upon this our verdict was formed. Because we considered ourselves restricted by the charge of the court to the authority of Newell, vested in him by the articles of co-partnership and the letters of his partners, Tyack and Murray, to make that particular sale for that particular consideration.

JNO. R. KINNARD,
WM. NETTLES,
THOS. V. MORTIMER,
A. McNEILL,
J. S. ROBERTS,
J. C. DEONS,
JOHN H. NORRIS,
WM. H. NEBLETT.

UNITED STATES OF AMERICA,
County of Galveston, State of Texas,
and district of Texas.

Before me, John S. Jones, a commissioner, duly appointed by the United States district court, of the district of Texas, for the purpose of taking affidavits and bail, personally came and appeared John R. Kinnard, Wm. Nettles, Thomas V. Mortimer, A. McNeill, J. S. Roberts,

J. C. Deon, and John H. Norris, and Wm. H. Neblett, whose names are subscribed to the annexed paper writing, and who, being by me severally sworn, did depose and say, that the matters and things set forth in said paper writing are true, and that they severally signed the same.

Given under my hand this the 22d day of January, A. D. 1850.

JOHN S. JONES,
U. S. C, D. C., D. T.

And afterwards, on the same day, to wit, on the 25th day of January, A. D. 1850, came on to be heard the motion of defendants for a new trial in this cause; whereupon the court made the following order, that is to say:

TYACK and MURRAY
vs.
NEWELL and DOSS.

This day came on to be heard and determined the motion heretofore filed for a new trial in this cause; and after argument being had thereon, and by the court here fully understood, it is considered by the court that said motion be overruled.

And afterwards, to wit, on the 28th day of January, A. D. 1850, Stephen W. Doss, one of the defendants in this cause, by his counsel, filed the following motion, in words and figures as follows, to wit:

In the district court of the United States, for the district of Texas, sitting in equity.

Between WILLIAM TYACK and Lindley Murray, complainants,
against
STEWART NEWELL and Stephen W. Doss, defendants.

The defendant, Stephen W. Doss, comes and moves the court, upon the return of the certificate of the verdict of the jury, from the law side of the court into the equity side of the court, to order and decree that said verdict does not affect the rights, or conclude the defence of the said Doss in this case, and that he is entitled to a decree in his favor for the property claimed by him in this suit; and assigns the following as the facts and grounds upon which this motion is made:

1. The jury misconceived and misunderstood the charge of the court, in regard to the nature and effect of the issue submitted to them.

2. The verdict was obtained and rendered in consequence of such misconception and misunderstanding of the charge of the court.

3. The jury did not find, or intend to find, any fraud on the part of Stephen W. Doss, or his agent, Peter McGreal, in making the purchase of the goods and property referred to in the issue formed and submitted to them by the court. See the affidavit and certificate of the

jury, filed with the reasons for a new trial heretofore, and now made a part hereof.

4. The court erred in narrowing the issue submitted to the jury to the single inquiry of fraud on the part of Stewart Newell.

5. The issue should have been explained to the jury, to embrace the inquiry of fraud on the part of S. W. Doss, and of his agent, Peter McGreal.

6. That no fraud being found or proved on the part of said Doss, or his agent, he is entitled to a decree in his favor.

O. F. JOHNSON,
A. P. THOMPSON,
Sols. for S. W. Doss.

And afterwards, to wit, on the sixth day of February, A. D. 1850, Stewart Newell, one of the defendants in this cause, by his counsel, filed his motion for a new trial, in words and figures as follows, to wit:

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss. } In chancery.

Stewart Newell, one of the defendants in above entitled cause, moves the court, that the verdict of the jury herein, upon the issue directed by the court, be set aside, and that a new, or another, or the same issue be submitted to another jury, for the following reasons:

1st. That the court erred in instructing the jury to disregard the answers of defendants to the plaintiffs' bill, and that the said answers were not evidence, except so far as the special interrogatories were respectively answered by defendants.

2d. That the charge to the jury contained error in limiting the inquiries of the jury to the particular sale, and for this particular consideration; and for other errors apparent in and from said charge to the jury, as in writing, and given to the jury, and by them referred to in their retirement.

J. A. SWETT,
Of counsel for defendant, Stewart Newell.

And afterwards, on the same day, to wit, the sixth day of February, A. D. 1850, the motion of Stewart Newell, one of the defendants in this cause, came on to be heard; whereupon the court made the following order, that is to say:

TYACK and Murray
vs.
NEWELL and Doss.

This day came on to be heard the motion of the defendant, Newell, for a new trial in the issue submitted to the jury, and upon the hearing of the said motion, and the court being fully advised thereon, the said motion is overruled.

And afterwards, on the same day, that is to say, on the 6th day of February, A. D. 1850, Stephen W. Doss, one of the defendants in this suit, by his counsel, filed the following petition, to wit:

In the United States district court, for the district of Texas, sitting in equity.

WILLIAM TYACK and Lindley Murray, compl'ts,
vs.
STEWART NEWELL and Stephen W. Doss, defts.

The defendant, Stephen W. Doss, comes into court, and, upon intimation of the court that a decree will be entered in favor of the said complainants, asks and prays the court in said decree to stipulate and provide for his security therein, to wit, in this respect, that this court will order, adjudge, and decree, that the said complainants, and the defendant, Newell, co-partners, trading under the name of Stewart Newell & Company, re-assign, re-transfer, and restore to this defendant the sum of two thousand dollars, cash, paid for, and on account of, the goods purchased on the 10th July, A. D. 1848, from said co-partners, as well as to re-assign and re-transfer the sum of two thousand dollars, part of a judgment in favor of Hugh McGreal against William T. Crosbe, entered in the district court of Brazoria county, part payment for the same; and also to re-assign and re-transfer, to said defendant, the several tracts and parcels of land mentioned and described in the answer of this defendant to the amended bill of the said complainants, part payment for the same goods.

And inasmuch as said defendant, Newell, states and admits in his answer to the amended bill of complainants, that he took and holds said money, property, and lands for the use of his said co-partners and himself, this defendant refers to said record for proof herein, and for the reasons on which this application is founded.

O. F. JOHNSON,
A. P. THOMPSON,
Sols. for S. W. Doss.

February 6th, 1850.

And afterwards, to wit, on the eleventh day of February, A. D. 1850, the complainants, by their counsel, Merriman, Sherwood and Wagner, filed the following motion in words and figures as follows, to wit:

UNITED STATES DISTRICT COURT,
District of Texas.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss.
In equity.

And now at this day, that is to say, on the 11th day of February,

in this same term of December, come the said complainants, by Merriman, Sherwood & Wagner, their solicitors, and move this honorable court for a rule or order allowing or directing the receiver in this cause to collect, in the name of "Stewart Newell & Co.," or in the names of the members of the said firm, the notes, accounts, and choses in action belonging to the said firm of Stewart Newell & Co., and more especially those assigned to Benjamin C. Franklin for the purpose of collection, as appears by the answer of Stewart Newell; and also to demand and receive the moneys, (if any,) collected by said Franklin on said demands.

SHERWOOD, MERRIMAN & WAGNER,
Sols. for complainants.

I, N. B. Yard, receiver in the above cause, concur in the above motion, and pray the court to enter an order or rule in accordance with said motion, or for such other and further or different rule or order, as will enable me to close up the matters connected with my receivership in this cause, as in the judgment of this honorable *of this honorable* court is deemed proper.

Dated February 11th, 1850.

NAHOR B. YARD, *Receiver.*

Afterwards, on the fifteenth day of February, A. D. 1850, Nahor B. Yard, receiver in this cause, filed his account as receiver herein, in words and figures as follows, to wit:

UNITED STATES COURT,
District of Texas.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss. } In equity.

Account of N. B. Yard, receiver.

To the honorable the district court of the United States, for the district of Texas.

I, Nahor B. Yard, receiver in this cause, do herewith report a just and true account of the property, credits and effects, committed to my care as such receiver, with the income and profits of said property, credits, and effects, so far as the same have come to my knowledge, as follows, to wit:

Stock of goods, wares, and merchandise seized and taken into my possession as receiver in this cause the 11th and 12th days of July, 1848, and sold by H. A. Cobb, auctioneer, under my directions on the 6th and 7th days of November, 1848, in pursuance of the order of this court:

Gross amount of sales - - - - -	$8,692 20
Goods sold at private sale - - - -	18 08
Interest on Cobb's note - - - -	16 88
	$8,728 16

Account current.

The property, credits, and effects of the complainants in the above entitled cause, and of defendant, Stewart Newell, taken into the custody and possession of receiver, to Nahor B. Yard, receiver, Dr.

July 12, 1848.	To amount paid for drayage - -	$6 45
" "	To amount paid for ice - -	25
" "	To amount paid for expenses to Velasco	9 22½
" "	To amount paid for pilot boat - -	20 00
" "	To amount paid for negro hire for storing goods - - - -	2 50
" "	To amount paid for horse hire to Nichols - - - -	1 50
		$39 92½
1848.	Amount brought over - - -	$39 92½
July 20.	To amount paid to Winnie & Journey, voucher No. 1 - - - - -	5 50
" 14.	To amount paid for wharfage, voucher No. 2	17 26
" 17.	To amount paid for freight bill, voucher No. 3	209 00
Aug. 21.	To amount paid for rent to J. A. Sauters, voucher No. 4 - - - -	41 67
Sept. 2.	To amount paid for negro hire per order com'ta, voucher No. 5 - - -	6 50
" 2.	To amount paid for labor, negro boy Charles, voucher No. 6 - - - -	3 50
" 3.	To amount paid for blank book, voucher No.	60
" 3.	To amount paid for rent to J. A. Sauters, voucher No. 7 - - - -	25 00
" 3.	To amount paid for John S. Jones, voucher No. 8 - - - - -	32 00
" 3.	To amount paid for A. M. Hughs, voucher No. 9 - - - - -	4 00
Nov. 10.	To amount paid for rent to J. A. Sauters, voucher No. 10 - - - -	33 25
" 20.	To amount paid for negro hire (August 18th) voucher No. 12 . - - -	5 00
" 20.	To amount paid for rent to Briggs and Yard, 4 months, voucher No. 11 - -	10 00
" 20.	To amount paid for negro hire at sale, voucher No. - - - - -	10 00
" 20.	Amount paid for H. A. Cobb, auctioneer, voucher No. 13 - - - -	457 11
1849.		
May 23.	To amount paid for H. W. Wagner, voucher No. 14 - - - - -	45 00
June 6.	To amount paid for Thos. M. League, voucher No. 15 - - - - -	70 00

June	7.	To amount paid for William M. Sergeant, voucher No. 16 - - - -	$70 00
"	7.	To amount paid for John H. Illies, voucher No. 17 - - - - -	70 00
"	7.	To amount paid for Samuel Hinton, voucher No. - - - - -	25 00
1850.			
Feb'y	6.	To amount paid for P. J. Nunard - -	20 00
"	6.	To amount paid for James W. Moore, ($24 paid in draft,) voucher No. 18 - -	32 50
"	12.	To amount paid for printing, to W. Richardson, voucher No. 19 - - -	30 50
"	14.	To amount paid for Samuel Abbott, for drawing and settling this account, voucher No. 20 - - - - -	15 00
"	14.	To amount paid for Peter McGreal, Aug. 24, 1849, voucher No. 21 - - -	500 00
"	14.	To amount paid for Peter McGreal, Aug. 24, 1849, voucher No. 22 - - -	100 00
			$1,919 31½

The two items last above of $500 and $100, were paid by Jacob L. Briggs, the business partner of this receiver, during the absence of said receiver in the city of New York, and without his knowledge or authority; the said payments being claimed by one Peter McGreal, as the attorney of Stephen W. Doss, under some order or decree of the court in this cause, bearing date the 23d day of August, 1849.

			Per contra Cr.	
1848.				
Sept.	23.	By cash of Leput and Dyer -		$4 65
"	23.	" " for part bbl. molasses -		5 28
Oct.	20.	" " for rice and hides - -		8 15
Nov.	10.	" " of P. Victor, for goods bought		362 24
"	10.	" " of Briggs & Yard " " -		49 38
"	10.	" " of E. A. Rhodes " " -		29 11
"	10.	" " of S. Kirkland " " -		56
"	10.	" " of auctioneer on sale -		347 37
"	10.	" " of F. W. Bumgarten -		127 00
Dec.		" " of E. S. Wood - -		203 92
"		" " of George Ball - -		302 52
1849.				
May.		" " of Bremond & Vanalstine -		1,462 46
"		" " of J. S. Sydnor - -		2,399 45
"		" " of James K. Brown -		502 11
"		" " of Samuel Maas - -		648 20
July	7.	" " of Lawrence Frosh -		500 00

July 14. By cash of H. A. Cobb -	-	$392 00	
" 4. " " of Lawrence Frosh	-	50 00	
" 21. " " of do do	-	50 00	
" 27. " " of do do	-	50 00	
1850.			
Feb. 14. " " of H. A. Cobb -	-	315 80	
By amount due on Lawrence Frosh's note, dated Nov. 7, 1848, exclusive of interest	-	917 96	
			$8,728 16
			1,919 31½

Nett balance in the hands of receiver, the 14th February, 1850, including the amount due upon the note of Lawrence Frosh, said balance being subject to such charges and commissions of said receiver as the court hereafter allow - - - - - $6,808 84½

The several vouchers referred to in the foregoing account, respectively numbered, corresponding with the items to which they severally relate, are in the possession of said receiver, and ready to be produced and filed, in such manner and at such time as this court shall direct.

All which is respectfully submitted.

NAHOR B. YARD, *Receiver.*

February 14th, 1850.

THE STATE OF TEXAS,
City and county of Galveston, ss.

Nahor B. Yard, receiver in the above entitled suit, being duly sworn, doth depose and say, that the above is a just, full, and true account of the entire property and effects embraced in this deponent's said receivership in this suit, so far as the same had come to his knowledge and possession, and of all receipts and disbursements on account of said property and effects, which have ever been received or paid by this deponent, or by any other person by his order or for his use: also, that the several sums of money mentioned in the foregoing account as having been paid, were actually paid or incurred by him, this deponent, in the cause of the execution of his said receivership in this cause, except the last two items of debits in said account, purporting to have been paid to Peter McGreal; and as to those payments this deponent says, that the same were made in the manner stated in said account: And this deponent further says, that he doth not know of any error or omission in the foregoing account to the prejudice of any of the parties in said cause.

NAHOR B. YARD.

Sworn before me this 15th day of February, 1850,

EMMETT JONES,
U. S. Com'r.

And afterwards, on the eighteenth day of February, A. D. 1850, the court made the following order, that is to say:

TYACK and MURRAY
vs.
NEWELL and DOSS.

In this cause it is ordered by the court that the report of the receiver heretofore appointed in this cause be referred to the master to hear testimony, and report thereon to the court.

And afterwards, to wit, on the nineteenth day of February, A. D. 1850, came on to be heard the motion of complainants, filed on the 11th day of February, 1850; whereupon the court made the following order, that is to say:

TYACK and Murray
vs.
STEWART NEWELL.

And now on this day came on to be heard the motion of complainants, filed on the 11th inst. Argument of counsel being heard, it is ordered that the receiver, N. B. Yard, be directed and empowered to collect, in the name of Stewart Newell, or in the name of the members of the said firm, the notes, accounts, dues, and choses in action belonging to the said firm of Stewart Newell & Co., and more especially those assigned to Benjamin C. Franklin, for the purposes of collection, as appears by the answer of Stewart Newell; and also to demand and receive from said Franklin all moneys or effects collected by said Franklin in the said cause.

And afterwards, to wit, on the twenty-sixth day of February, A. D. 1850, the court made the following order, which was entered upon the minutes in the words and figures following, to wit:

TYACK and Murray
vs.
NEWELL and Doss.

Ordered that it be referred to James Love, master in chancery, to ascertain and report the amount of capital paid in by each of the co-partners of the firm of Stewart Newell & Co. The amount of co-partnership assets in the hands of the complainants, or either of them, or made use of by them, or unaccounted for; also the amount of co-partnership assets in the hands of the defendant, Newell, or made use of by him, or unaccounted for; also a general statement of the accounts between the said co-partners; also to ascertain and report the names of the creditors of the said firm of Stewart Newell and Company; also the amount due each creditor, and the pro rata allowance of each, of the fund to be distributed.

And afterwards, to wit, on the first day of March, A. D. 1850, the

receiver in this cause filed his vouchers for disbursements made by him, and referred to by him in his report, filed on the 15th inst.; which said vouchers are in words and figures as follows:

N. B. Yard, *To Winne and Journey,* Dr.

To buggy to go to Velasco	$3 00
To passage for Hinton	2 00
To ferriage	0 50
	$5 50

Received payment, WINNE & JOURNEY.

Mr. N. B. Yard, receiver, *To Central Wharf.*
July 14, 1848.

To wharfage on mdge. received per Alamo, viz:

16 kegs nails, 22 boxes tobacco, 1 bundle and 11 do. buckets	$2 74
1 nest tubs and 18 p. castings, 10 chests tea, 16 boxes candles	1 54
12 boxes soap, 21 p. mdge., 2 reams paper, 6 boxes axes	1 06
1 box hardware, 22¼ chests tea, 1 brl. molasses, 913$\frac{5}{12}$ feet	11 92
	$17 76

Received payment by clerk,
J. S. LE CLERE, *Wharfmaster.*

GALVESTON, *July 17th,* 1848.

Received of N. B. Yard the sum of two hundred dollars, in full for freight on goods to and from Velasco, seized by him, the said N. B. Yard, as receiver in the case of Tyack and Murray vs. Stewart Newell & Co. and Stephen W. Doss, now pending in the U. S. court, district of Texas.

MARTIN PERKIS.

Received from Mr. N. B. Yard, receiver in the case of Tyack & Murray vs. Newell & Doss, the sum of forty-one$\frac{67}{100}$ dollars, in full for rent of the brick store on the strand, being at the rate of $25 per month, from 11th July ultimo, [to] 1st Sept. next, as agreed between Mr. Sauters and Mr. Warren.

H. SAUTERS.

Galveston, Aug. 21, 1848.

July, $16 67
Aug. 25 00

$41 67

Mr. YARD: There is due to the boys Proctor - $3 00
Harry - 3 50
Charles - 2 00

$8 50

For labor done in examining and survey [of] the goods of Tyack & Murray vs. Newell & Doss, which amounts you will please pay, and this will be your voucher.

THOS. M. LEAGUE,
WM. M. SERGEANT,
JNO. H. ILLIES,
Committee of examination.

Galveston, 2d Sept., 1848.

Mr. N. B. Yard, receiver in the case of Tyack & Murray vs. Newell & Doss, pay the boy Charles three $\frac{5\,0}{1\,0\,0}$ dollars for labor done on the goods and merchandise of the above case.

THOS. M. LEAGUE,
WM. M. SERGEANT,
JNO. H. ILLIES.

Received, Galveston, 1st October, 1848, from Messrs. Briggs and Yard, twenty-five dollars, for store rent from 1st September to 1st October, 1848.

J. A. SAUTERS,
$25 Per CH. SCHOEDER.

TYACK & MURRAY
vs.
STEWART NEWELL.

No. 8.

Upon motion of John S. Jones, one of the commissioners of affidavits in this court, and with the consent of parties, by counsel, it is ordered, that the receiver in this cause, out of the funds in this cause in his hands, pay said Jones his fees for taking testimony in this cause.

Amount of fees, $32 00; the sum of $30 00; Dec. 26, 1848.
Received in full of N. B. Yard. JNO. S JONES.

UNITED STATES OF AMERICA,
District of Texas, to wit:

District court, December term, 1848.

No. 9.

TYACK & MURRAY
vs.
STEWART NEWELL. } 35.

Upon motion of Archibald M. Hughs, one of the commissioners of

affidavit in this court, and with the consent of parties, by counsel, it is ordered, that the receiver in this cause, out of the funds in this cause in his hands, pay said Hughs his fees for taking testimony in this cause.

A true copy. $4 00.

A. M. HUGHS, *Clerk.*

Galveston, Dec. 10th, 1848; received four dollars in part of fees from N. B. Yard, esq.

A. M. HUGHS,
By WM. G. HALL.

No. 10.

Received, Galveston, 10th November, 1848, from Mr. N. B. Yard, thirty-three $\frac{33}{100}$ dollars, for store rent, for account of Newell & Co., from the 1st October to date.

$33\frac{33}{100}$. J. A. SAUTERS.

GALVESTON, *Nov. 20th,* 1848.

N. B. Yard, (receiver case of Stewart Newell & Co., and Stephen W. Doss,)

To Briggs and Yard, Dr.,

To 4 months rent of store on Tremont street, to store the goods landed from sloop Alamo, c. 15 per month - - $60

Received payment,
BRIGGS & YARD.

12.

Mr. Yard,

To E. O. Lynch, Dr.,

For hire of young Harry four days, at $1 25 - - $5 00

Received payment,
E. O. LYNCH,
Per J. J. GRISHAM.

Galveston, Nov. 10th, 1848.

U. S. district court, district of Texas.

TYACK & MURRAY
vs.
NEWELL & DOSS.

Whole amount of sales made by me for N. B. Yard, receiver in the above entitled cause, the 6th and 7th days of Nov., 1848, $8,692 20.

No. 13.

Charges.

Labor, bell-ringing, &c. - - - -	$22 50
My commissions - - - - -	434 61
Received pay in full from N. B. Yard, Nov. 20, 1848	$457 11

H. A. COBB, *Auctioneer.*

No. 14.

GALVESTON, *May* 23*d*, 1849.

N. B. Yard, esq., receiver, &c.,

To. H. W. Wagner, Dr.

To assistance rendered in making an inventory of the stock of goods in the case of Tyack & Murray vs. Stewart Newell et al., from 21st September to 29th September, 1848, inclusive, being 9 days, a. 5 - - - - $45 00

Received payment,
H. W. WAGNER.

United States district court, district of Texas, May term, 1849.

TYACK and MURRAY
vs.
STEWART NEWELL.

The report of the master in this cause, filed on the 27th day of February, 1849, having been read, it is ordered that the same be approved. It is further ordered, that the receiver pay to William M. Sergeant, Thomas M. League, and John Illies, seventy dollars each, as compensation as appraisers.

No. 15.

I, James Love, clerk of said court, do hereby certify, that the foregoing is a true and correct copy of an order made in the above [L. S.] entitled cause on the 31st day of May, A. D. 1848. Witness my hand this 5th day of June, A. D. 1849.

JAMES LOVE, *Clerk.*

Received the within amount of seventy dollars of N. B. Yard, this 6th day of June, 1849.

THOS. M. LEAGUE.

No. 16.

Received, Galveston, 7th June, 1849, of N. B. Yard, the within amount of seventy dollars.

W. M. SERGEANT.

No. 17.

Received, Galveston, June 7th, 1849, from N. B. Yard, the receiver, seventy dollars in full. JNO. H. ILLIES.

1849. November.

Wm. Tyack and Lindley Murray

To James W. Moore, Dr.

For copy of record, Tyack and Murray vs Stewart Newell -			$24 00
Do.	do.	John Geddis, same - - -	7 00
Do.	do.	Jones, Ufford & Co., same - -	1 50
			32 50
Received draft for - - - - -			24 00
Balance due - - - - - -			$8 50

Mr. N. B. Yard, receiver in the case of Tyack and Murray vs. Newell and Doss, will please pay to James W. Moore eight dollars and fifty cents, balance of the above bill, which was for testimony used by plaintiffs on the trial of said cause. F. H. MERRIMAN,
L. SHERWOOD.

Galveston, February 6th, 1850.

No. 19.

N. B. Yard, as receiver,

To News office, Dr.

Sept. 26, 1848.	To adv't of receiver's sale 4 squares, 6 insertions - - - - -	$14 00
	To same in Weekly News, 2 weeks -	6 00
	To same one insertion in Victoria paper, as per account rendered, 3½ squares -	3 50
Nov. 6,	To 50 blank notes and bonds - -	4 00
4,	To notice of receiver's sale, 2 squares, 2 insertions - - - - -	3 00

1850, February 12th, received payment,
W. RICHARDSON.

District court, district of Texas.

TYACK & MURRAY
vs.
NEWELL & DOSS.

No. 20.

Received of N. B. Yard, esq., receiver in this cause, fifteen dollars for drawing and stating account of said receiver.
SAM. S. ABBOTT.

Galveston, February 14th, 1850.

No. 21.

Received, Galveston, August 24th, 1849, from N. B. Yard, receiver in the case of Tyack & Murray vs. Newell & Doss, by the hands of Jacob L. Briggs, esq., five hundred dollars, on account of said cause, and in pursuance of the decree of the 23d August, 1849, rendered therein.

$500.

S. W. DOSS,
By PETER MACGREAL,
His attorney in fact.

No. 22.

Received, Galveston, August, 1849, from N. B. Yard, receiver, by the hands of Jacob L. Briggs, esq., one hundred dollars in pursuance of the foregoing order of 23d August.

S. W. DOSS,
By PETER MACGREAL.

And afterwards, to wit, on the sixth day of March, A. D. 1850, James Love, master in chancery, returned into court his report herein; whereupon the court made the following order, to wit:

TYACK & MURRAY
vs.
STEWART NEWELL et al.

James Love, master in chancery, to whom was referred the report of N. B. Yard, the receiver, made his report, which was ordered to be filed.

And thereupon, the master in chancery, to whom was referred the report of the receiver in this cause, filed his report in words and figures, as follows:

TYACK & MURRAY
vs.
STEWART NEWELL, &c. } In chancery.

In pursuance of an order of court made in the above entitled cause, referring the accounts of the receiver herein to me for examination, I beg leave to report, that in obedience to the order of court, the receiver, N. B. Yard, on the 6th and 7th of November, 1848, caused the goods, wares, and merchandise to be sold at public auction, in the city of Galveston, and that the proceeds of the sale amounted to $8,692 20

Amount sold at private sale	19 00
Interest received from Cobb	16 88
Making a total of	$8,778 16

From which is deducted the expenses of sale, &c., amounting to	$1,319 31½
Leaving a balance of	7,408 84½
Of which there is in the hands of the receiver in cash	6,490 88½
Also note of Lawrence Frosh, &c.	917 96
	$7,408 84½

Reference for proof of this statement, as to the amount of assets in the hands of the receiver, will be seen by vouchers filed by him in support of his report.

The two last charges in the receiver's report, one of $500 and one of $100, for cash paid by his partner in business, J. L. Briggs, during his absence in New York, without his "authority or knowledge," I have rejected; with this exception, I find the report to be correct.

The receiver has presented no account for his services.

All of which is respectfully submitted.

March 6th, 1850. JAMES LOVE, *Master.*

And afterwards, on the same day, that is to say, on the 6th day of March, A. D. 1850, the court made the following order, that is to say:

TYACK & MURRAY
vs.
NEWELL & DOSS.

James Love, master in chancery, to whom was referred, for report, the matters of account between the partners, and the amount of debts due the creditors, made his report, which was filed.

Which report of the master is in words and figures as follows, to wit:

In the United States district court, district of Texas.

TYACK & MURRAY
vs.
STEWART NEWELL & Co.

In pursuance of the order of court in this case made on the 26th day of February, 1850, I gave notice to the counsel of the parties to the suit to appear before me, and proceeded to the examination of the several matters referred to in the order aforesaid, and report:

That the capital stock of the firm of Stewart Newell & Co., on the arrival of the goods in Galveston, including first cost in New York, freights, insurance, &c., was $19,500; as will be seen by reference to exhibit, filed and accompanying this report, marked A.

This stock in trade was created in the following manner:

Merchandise purchased on time in New York by Stewart Newell & Co., of sundry individuals, to the amount of	$14,654 38

Cash advances made by Wm. Tyack - -	$4,473 62
Cash advances made by Stewart Newell - -	372 00
Making a total of - - - - -	$19,500 00

as will fully appear by referring to exhibit A, and the evidence on file in this suit.

During the existence of the firm, Tyack received, in remittances from said firm in Galveston, the sum of	$1,650 00
leaving a balance due him, as per account current accompanying this report, and marked B, of -	2,823 62
Stewart Newell received, for goods sold, the sum of -	7,702 45
from which is to be deducted various amounts accounted for by him as being used for the benefit of the firm, as is seen in account current, marked C, for - - - - - - - -	3,970 75
Leaving a balance of - - - -	$3,731 70

due by him to the firm of Stewart Newell & Co.

Lindley Murray, one of the partners, made no advances, nor did he receive any portion of the effects.

The entire amount due to creditors in New York by Stewart Newell & Co. for merchandise purchased on time, which constitutes three-fourths of their capital, together with the interest which has accumulated on the same, now amounts to - - $16,649 98

Accompanying this report a detailed statement will be found, marked D, showing the amount due each creditor on the 6th of March, 1850, including principal and interest up to that date.

I have made no allowance for interest due Tyack upon the balance owing to him by the firm; nor have I calculated the interest due on Newell's indebtedness to the said firm. If, however, the court should be of opinion that interest should be charged, then the account would stand thus:

December 1, 1847. Amount due Wm. Tyack by Newell & Co. - - - - -	$2,823 62
Interest, at 7 per cent., to date - - -	448 02
Due Wm. Tyack, 6th March, 1850 - -	$3,271 64
June 4, 1848. Amount due by S. Newell to Newell & Co. - - - - - -	$3,731 70
Interest on same, at 7 per cent., to date - -	457 11
Due by S. Newell, 6th March, 1850 - -	$4,188 81

All of which is respectfully submitted.

March 6th, 1850. JAMES LOVE, *Master.*

"A."

Statement showing the capital stock of S. Newell & Co. in Galveston, and the sums in which they are indebted.

To amount due sundry creditors in New York for purchase of goods at the commencement of business	$14,654 38
" Wm. Tyack, for this amount advanced by him -	4,473 62
" Stewart Newell, for this amount advanced by him	372 00
	$19,500 00
By stock of goods on hand in Galveston, at first cost, including freight, insurance, wharfage, drayage, &c., &c. - - - - - - -	$19,500 00

Note 1. To prove amount due creditors in New York see amended bill and amended answer.

Note 2. See Warren's deposition, pages 5 and 6, and admitted in Newell's amended answer.

Note 3. This sum admitted by counsel to have been paid by Newell.

Note 1. To prove capital stock at Galveston see amended bill, page 4, and amended answer, page 4.

B.

William Tyack in account current, [with] Stewart Newell & Co.

DR.

1.	To this sum received by you in cotton and molasses - - - -	$850 00	
	" this sum received by you from insurance - - - - -	800 00	
			$1,650 00
2.	" balance due William Tyack by Stewart Newell & Co. - - -		2,823 62
			$4,473 62

Note 1. For proof, see page 5 of amended answer to 25th interrogatory of Newell.
" 2. For proof, see same answer.

CR.

1.	By this amount paid by you in the concern as capital - - - - -	$4,473 62
	By balance due Mr. Tyack - - - - - - - - - -	$2,823 62

GALVESTON, *March 6th*, 1850.

Note 1. See Warren's deposition, page 5 and 6, filed 9th August, 1848. See also amended answer of Newell, to prove the advance made by Tyack.

Doss vs. Tyack et al.

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C.

Stewart Newell in account current [with] Stewart Newell & Co.

DR.

1.	To this amount for goods sold by you at private sale	$7,210 95
2.	" this amount for damaged goods, sold at auction	362 62
3.	" this amount for undamaged do., at do.	128 88
		$7,702 45
	To balance due by Stewart Newell	$3,731 70

Note 1. See Warren's deposition, page 7.
" 2. See Lynch's deposition, marked H.
" 3. See amended answer to Newell to 15th interrogatory.

CR.

By this	sum paid by you into the concern as capital	$372 00
"	sum remitted by you to Wm. Tyack; claim on an insurance company	800 00
"	sum rendered William Tyack by shipment of cotton and molasses	850 00
"	sum paid attorney, J. A. Swett, esq.	200 00
"	sum, being expenses incurred in selling goods	1,200 00
"	sum in the hands of B. C. Franklin, esq.	548 75
"	balance due by Stewart Newell	3,731 70
		$7,702 45

GALVESTON, *March 6th*, 1850.

Note. The above credits claimed by Newell, admitted by counsel to have been paid.

D.

Creditors of Stewart Newell & Co., showing the amount due each one in accordance with the *on file in the cause.*

April 23	To amount due Trowbridge, Dwight & Co. by draft - -		$883 16	
	To less paid by Tyack - - - - - -		157 00	
			726 16	
	To interest on same till 6th March, 1850, at 7 per cent. - - -		94 09	
				$820 25
June 23	To amount due Cromwell, Haight & Co. - - . -		983 15	
	To interest till 6th March, 1850 - - - - -		116 75	
				1,099 90
May 9	To amount due Jaudon & Mason - - - -		696 88	
	To interest on same till March 6, 1850 - - - - -		88 53	
				785 41
5	To amount due Hagerty, Draper and Jones - -	$1,410 00		
12	To amount due same - - - - - -	686 79		
			2,096 79	
	To interest till 6th March - - - -		271 28	
				2,368 07
10	To amount due John Gould - - - -		225 76	
	To interest till 6th March, 1850 - - - -		28 75	
				254 51
10	To amount due Austins and Spicer - - -	$1,077 31		
14	To amount due same - - - - - -	834 00		

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Creditors of Stewart Newell & Co., showing the amount due each one in accordance with the *on file in the cause.*

21	To amount due same - - - - -	$331 64		
			$2,242 95	
21	To interest on same till 6th March, 1850 - -		291 87	
				$2,534 82
12	To amount due Egleston & Buttele - - -		513 67	
12	To interest on same till 6th March, 1850 - -		65 35	
				579 02
13	To amount due Lee & Brewster - - -		1,999 46	
	To interest on same till 6th March, 1850 - -		253 90	
				2,253 36
14	To amount due James McCullough, Pres't, & Co. -		117 00	
	To interest till 6th March, 1850 - - -		12 99	
				129 99
18	To amount due J. & R. Bruce - - -		1,024 17	
19	[To interest till 6th March, 1850] - -		129 05	
29	To Job Chandler & Foster - - - -	482 08		1,153 36
	To same, book account - - - - -	24 91		
			506 99	
	To interest on same till 6th March, 1850 - - - -		63 38	570 37
22	To amount due C. J. Richards - - - - -		640 10	
	To interest on same till 6th March, 1850 - - - -		80 18	720 28
23	To amount due Charles Cartledge & Co. - - - -		256 01	

	To interest on same till 6th March, 1850 - - - -	31 97	
			287 98
25	To amount due Doremus & Nixon - - - - -	653 04	
25	To interest on same till 6th March, 1850 - - - -	81 43	
			734 47
25	To amount due Geo. A. Trobridge, $549 75; int. $62 37 - -	–	773 62
July 23	To amount due Spear & Ripley, $711 25; do. $711 25 - -	1,422 50	
	To interest on same till 6th March, 1850 - - - -	162 21	
			1,584 71
			$16,649 98

Amount due 6th March, 1850, to the creditors, New York—

Original debt, without interest - - - - -	$14,654 38
Interest at 7 per cent. till 6th March, 1850 - - - -	1,995 60
	$16,649 98

H.

The testimony of E. O. Lynch.

He states, after being duly sworn, that he sold at auction, for Stewart Newell & Co., to the nett amount of $362 62. There had been in my possession a lot of damaged goods, the sales of which amounted to $801 60. Four hundred thirty-eight dollars seventy-eight cents' worth were bought in by Robinson for Newell, and returned to his store; leaving, as above stated, the sum of $362 62, [the] nett proceeds which I paid over to him. The date of this sale was January 30, 1848.

E. O. LYNCH.

Subscribed and sworn to before me on the 1st March, 1850.

JAMES LOVE, *Master.*

And afterwards, to wit, on the 7th day of March, A. D. 1850, James Love, esq., one of the masters in chancery of this court, and to whom the accounts of the receiver in this case, &c., were referred, filed his claim for services as such master as follows, to wit:

TYACK & MURRAY
vs.
STEWART NEWELL & Co.

I have served six days as master in chancery in investigating matters referred to me, for which I ask the court to make me the usual allowance.

JAMES LOVE.

March 7, 1850.

And afterwards, on the seventh day of March, A. D. 1850, the defendants, by their counsel, filed their exceptions to the master's report on the account of the receiver in this cause, and the statement of accounts between the partners and creditors of the firm of Stewart Newell & Co., in the following words and figures, that is to say:

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss.

In chancery.

In this cause notice is given that the report of James Love, master in chancery, in relation to and on the receiver's accounts, herein filed, will be excepted to.

O. F. JOHNSON,
Of counsel for defendant Doss.

Also, that both the defendants will file exceptions to the report of said master in stating the accounts between said defendant, Newell, and said complainants, Tyack & Murray.

J. A. SWETT,
Of counsel for defendant, Newell.

And upon the filing of the notice of exceptions by defendant, the following entries were made upon the minutes of the court, that is to say:

TYACK and Murray
vs.
STEWART NEWELL et al.

On this day defendants' counsel filed in open court notice of exceptions to master's report, filed on yesterday, on receiver's report.

SAME
vs.
SAME.

On this day defendants' counsel filed in open court notice of exceptions to master's report on matters of account between the partners and the creditors.

And on the same day, that is to say, on the seventh day [of] March, A. D. 1850, Stewart Newell, one of the defendants in this cause, filed his exceptions to the statement of the accounts between the partners, in the words and figures following, that is to say:

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss. } In chancery.

In the above entitled cause the defendant, Stewart Newell, excepts to the report of the master, herein made and filed, so far as said report refers to and states the amount paid in by said Tyack for the benefit of said partnership firm of Stewart Newell & Co., mentioned therein; also, that part of said report finding an indebtedness of $3,731 70 from Newell to said firm; also to that part of said report, stating the amount due each and all the persons called creditors of the firm of Stewart Newell & Co., for reasons that said report was erroneous, and that the testimony on which said report was made and founded was not properly reported therewith to the court.

J. A. SWETT,
Of counsel for defendant, Newell.

And on the same day, to wit, on the seventh day of March, A. D. 1850, defendant, Doss, by his counsel, filed his exceptions to the master's report, in words and figures as follows, to wit:

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss.

The defendant, Doss, hereby excepts to the report of the master upon the receiver's account herein filed, in disallowing the two last items in said receiver's account, to wit, one item of $500, and one of $100, for the reason that the said items should have been allowed by said master, and

H.

The testimony of E. O. Lynch.

He states, after being duly sworn, that he sold at auction, for Stewart Newell & Co., to the nett amount of $362 62. There had been in my possession a lot of damaged goods, the sales of which amounted to $801 60. Four hundred thirty-eight dollars seventy-eight cents' worth were bought in by Robinson for Newell, and returned to his store; leaving, as above stated, the sum of $362 62, [the] nett proceeds which I paid over to him. The date of this sale was January 30, 1848.

E. O. LYNCH.

Subscribed and sworn to before me on the 1st March, 1850.

JAMES LOVE, *Master.*

And afterwards, to wit, on the 7th day of March, A. D. 1850, James Love, esq., one of the masters in chancery of this court, and to whom the accounts of the receiver in this case, &c., were referred, filed his claim for services as such master as follows, to wit:

TYACK & MURRAY
vs.
STEWART NEWELL & Co.

I have served six days as master in chancery in investigating matters referred to me, for which I ask the court to make me the usual allowance.

JAMES LOVE.

March 7, 1850.

And afterwards, on the seventh day of March, A. D. 1850, the defendants, by their counsel, filed their exceptions to the master's report on the account of the receiver in this cause, and the statement of accounts between the partners and creditors of the firm of Stewart Newell & Co., in the following words and figures, that is to say:

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss.

In chancery.

In this cause notice is given that the report of James Love, master in chancery, in relation to and on the receiver's accounts, herein filed, will be excepted to.

O. F. JOHNSON,
Of counsel for defendant Doss.

Also, that both the defendants will file exceptions to the report of said master in stating the accounts between said defendant, Newell, and said complainants, Tyack & Murray.

J. A. SWETT,
Of counsel for defendant, Newell.

And upon the filing of the notice of exceptions by defendant, the following entries were made upon the minutes of the court, that is to say:

TYACK and Murray
vs.
STEWART NEWELL et al.

On this day defendants' counsel filed in open court notice of exceptions to master's report, filed on yesterday, on receiver's report.

SAME
vs.
SAME.

On this day defendants' counsel filed in open court notice of exceptions to master's report on matters of account between the partners and the creditors.

And on the same day, that is to say, on the seventh day [of] March, A. D. 1850, Stewart Newell, one of the defendants in this cause, filed his exceptions to the statement of the accounts between the partners, in the words and figures following, that is to say:

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss. } In chancery.

In the above entitled cause the defendant, Stewart Newell, excepts to the report of the master, herein made and filed, so far as said report refers to and states the amount paid in by said Tyack for the benefit of said partnership firm of Stewart Newell & Co., mentioned therein; also, that part of said report finding an indebtedness of $3,731 70 from Newell to said firm; also to that part of said report, stating the amount due each and all the persons called creditors of the firm of Stewart Newell & Co., for reasons that said report was erroneous, and that the testimony on which said report was made and founded was not properly reported therewith to the court.

J. A. SWETT,
Of counsel for defendant, Newell.

And on the same day, to wit, on the seventh day of March, A. D. 1850, defendant, Doss, by his counsel, filed his exceptions to the master's report, in words and figures as follows, to wit:

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss.

The defendant, Doss, hereby excepts to the report of the master upon the receiver's account herein filed, in disallowing the two last items in said receiver's account, to wit, one item of $500, and one of $100, for the reason that the said items should have been allowed by said master, and

for the reason that the testimony on which said report was made, is not reported by said master to the court.

O. F. JOHNSON,
Of counsel for defendant, Doss.

And upon the same day, to wit, on the seventh day of March, A. D. 1850, the exceptions filed by defendants to master's report on account of the receiver in this cause came on to be heard; whereupon the court made the following order, to wit:

TYACK and Murray
vs.
NEWELL and Doss.

On this day defendants' counsel produced and filed, in open court, exceptions to master's report on the receiver's account heretofore filed; and the same came on to be heard; and the court being now sufficiently advised, it is ordered that the exceptions be overruled, and that the master's report be confirmed.

And upon the same day, to wit, on the seventh day of March, A. D. 1850, the exceptions filed by defendants to the master's report and statement of accounts between the partners of said firm and the creditors thereof came on to be heard; whereupon the court made the following order, that is to say:

TYACK and Murray
vs.
NEWELL & Doss.

On this day defendants' counsel filed in open court his exceptions to master's report on matters of account between the partners, and between them and the creditors, and the same came on to be heard. The court being now sufficiently advised, it is ordered that the report of the master be confirmed.

And afterwards, on the same day, the claim of James Love, master in chancery, for services rendered as such master in this cause, was presented to the court; whereupon the court made the following order, that is to say:

TYACK and Murray
vs.
NEWELL and Doss.

It is ordered, that James Love be allowed the sum of sixty dollars, for his services as master in chancery, for investigating and making report upon the various matters referred to him in the progress of this cause; and that N. B. Yard, the receiver herein, pay the aforesaid sum unto the said Love, out of any moneys in his hands not heretofore appropriated.

And afterwards, that is to say, on the eighth day of March, A. D.

1850, this cause came on be heard; whereupon the court rendered a decree therein in the words and figures following, to wit.

TYACK and Murray }
vs.
NEWELL and Doss. }

The above cause having come on to be heard at the present term of this court, on the pleadings and proofs, and after hearing argument of counsel for complainants, and both defendants in said cause, it is ordered, adjudged, and decreed by the court, that the sale of the property of the said firm of "Stewart Newell & Co." to the said defendant, Stephen W. Doss, and alleged to have been made in or about the tenth day of July, A. D. 1848, and mentioned on the bill of complaint, and the several answers of the defendants, be and the same is set aside, as fraudulent against the said complainants.

It is further ordered, adjudged, and decreed by the court, that the co-partnership heretofore existing between William Tyack, Lindley Murray, and Stewart Newell, under the articles of co-partnership mentioned and set forth in the bill of complaint in this cause, be and the same is hereby dissolved.

It is further ordered, adjudged, and decreed by the court, that an accounting be had, between said William Tyack, Lindley Murray, and Stewart Newell, of and concerning the co-partnership matter between them, under the said co-partnership agreement in the bill of complaint set forth, and it having been referred to a master of this court to ascertain and report the situation of accounts between the said complainants and the said defendant, Newell, of and concerning their said co-partnership matters, and concerning the amount of capital paid in by each of said co-partners, and of and concerning the co-partnership property received by either of the said parties, or made use of by them respectively, or accounted for by them respectively, and also to ascertain and report the names of the creditors of the said Stewart Newell & Co., and the amount due each.

It is further ordered, adjudged, and decreed, that the capital advanced and paid in by the said William Tyack, under the co-partnership agreement, after deducting the amount received therefrom, the effects of the said co-partnership amounting, as ascertained in the report of the said master, and confirmation of said report, to two thousand eight hundred and twenty-three dollars and seventy-two cents, be, and the same is hereby, allowed to the said William Tyack; and that for one-third part of the balance so ascertained and allowed, that is to say, the sum of nine hundred and forty-one dollars and twenty cents, payment is hereby decreed from the said Stewart Newell to said William Tyack individually.

And it is further ordered, adjudged, and decreed that the said William Tyack have execution therefor against the Stewart Newell.

It is further ordered, adjudged, and decreed, that for all the effects, or co-partnership property of said firm, received and made use of by said

Stewart Newell, or unaccounted for by him, after deducting therefrom the amount of capital paid in by said Newell, and the expenses, remittances, and payments made by said Newell for the benefit of said firm, amounting, as ascertained on the like report of the said master and its confirmation, to three thousand seven hundred and thirty-one dollars and seventy cents, the said Stewart Newell be, and he is hereby, made accountable to said firm.

And it is hereby ordered, adjudged, and decreed that the said Stewart Newell pay to the said complainants two-thirds of said balance so ascertained and found against him, amounting to two thousand four hundred and eighty-seven dollars and eighty cents, and that said complainants have execution therefor against the said Stewart Newell.

And it further appearing, on the like report of the said master, and the confirmation thereof, that the said firm of Stewart Newell & Co., were and are indebted to the following named persons, corporations, and firms, at the date of said report, and in the several and respective amounts as follows, that is to say:

To Trowbridge, Dwight & Co.	$820 25
Cromwell, Haight & Co.	1,099 90
Haggerty, Draper & Jones	2,368 07
Jaudon & Mason	785 41
John Gould	254 51
Austins & Spicer	2,534 83
Eggleston & Battelle	579 02
Lee & Brewster	2,253 36
New York and Saugerties White Lead Co.	129 99
J. & R. Bruce	1,153 22
Job, Chandler & Foster	570 37
C. J. Richards	720 28
Charles Cartlidge & Co.	287 98
Doremus & Nixon	734 47
George A. Trowbridge	773 62
Spear & Ripley	1,584 71

Therefore it is further ordered, adjudged, and decreed, that the copartnership property of the said firm of Stewart Newell & Co., now in the hands of the receiver in this cause, or hereafter to be collected by him, after paying disbursment expenses and commissions allowed to said receiver, be, and the same is hereby, directed to be distributed amongst the creditors of the said firm of Stewart Newell & Co. pro rata, according to the respective amounts due each of said creditors; and that the receiver take the receipt of such creditor or creditors respectively, for each and every amount so paid by him.

It is further ordered, adjudged, and decreed, that the said defendants, Stewart Newell and Stephen W. Doss, pay the costs of the said complainants, by them in this suit incurred and expended, to be taxed; and that the said complainants have execution therefor against the said defendants, Stewart Newell and Stephen W. Doss.

And afterwards, to wit, on the ninth day of March, A. D. 1850, the defendants in this cause, by their counsel, filed their petition for an appeal in this cause, in words and figures following, to wit:

In United States district court, in chancery.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss.

And now come the said defendants in the above entitled cause, and pray the honorable court an appeal from the judgment of the court in said cause, and from the decree rendered therein on the 8th day of March, 1850, to the Supreme Court of the United States, to the end that the honorable supreme court aforesaid may revise the decision of this honorable court, and correct the errors of this honorable court, and generally to do what to law and equity may appertain.

J. A. SWETT,
Of counsel for defendant, Stewart Newell.
O. F. JOHNSON,
Of counsel for defendant, Stephen W. Doss.

And afterwards, on the eleventh day of March, A. D. 1850, the petition of defendants in this cause, prayin[g] an appeal to the Supreme Court of the United States, came on to be heard; whereupon the court made the following order, to wit:

TYACK and Murray
vs.
NEWELL and Doss.

The defendants, by their counsel, filed in open court notice of, and pray an appeal from the decision of the court heretofore rendered in this cause. It is ordered that the appeal be allowed.

It is further ordered that the defendant, Doss, shall, within the time prescribed by law, enter into bond, with approved security, in the sum of five hundred dollars, conditioned as the law directs. The fund to be distributed is to remain and abide the final termination of this cause.

And afterwards, to wit, on the eighteenth day of March, A. D. 1850, the defendants in this cause filed their appeal bond; which bond is in words and figures as follows, to wit:

In the district court of the United States, in and for the district and State of Texas, exercising the jurisdiction and powers of a circuit court of the United States, in equity.

Between WILLIAM TYACK and Lindley Murray,
complainants,
and
STEWART NEWELL and Stephen W. Doss,
defendants.

Know all men by these presents, that we, Stephen W. Doss, Peter

McGreal, and James P. Nash, are held and firmly bound unto the above named William Tyack and Lindley Murray, in the sum of five hundred dollars, to be paid to the said Tyack and Murray, their executors, and administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our, and each of our, heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated this sixteenth day of March, in the year of our Lord one thousand eight hundred and fifty.

Whereas the above named Stephen W. Doss hath prayed and obtained an appeal to the Supreme Court of the United States, to revise the judgment or decree in the above entitled suit, rendered by the said district court of the United States, for the said district of Texas, exercising the jurisdiction of a circuit court as aforesaid:

Now, therefore, the condition of the said obligation is such, that if the above named Stephen W. Doss shall prosecute his said appeal to effect, and answer all damages and costs if he shall fail to make good his appeal, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

STEPHEN W. DOSS, [L. S.]
By his counsel of record, A. P. THOMPSON.
PETER MACGREAL, [L. S.]
JAMES P. NASH. [L. S.]

Signed, sealed, and delivered, in presence of—
J. A. SWETT,
J. B. WILLIAMS.

And on the same day, that is to say, on the eighteenth day of March, A. D. 1850, the defendants, by their counsel, filed the following power of attorney, to wit:

THE UNITED STATES OF AMERICA,
District of Texas.

Know all men by these presents, that we, Peter MacGreal, Richard P. Jones, and , of the county of Brazoria, in said district of Texas, have nominated, constituted, and appointed, and by these presents do make, constitute, and appoint, Ovid F. Johnson, esq., and Joseph A. Swett, esq., or either of them, of Galveston, our true and lawful attorney, for us, and in our names, to sign, seal, make, execute, and deliver, any bond or bonds, necessary or requisite for the purpose of appeal from the decision of the United States district court, for the district of Texas, sitting in chancery, in the case of William Tyack and Lindley Murray, complainants, against Stewart Newell and Stephen W. Doss, defendants, on behalf of the defendants, hereby ratifying and confirming all that our said attorneys, or either of them, shall do in the premises by virtue hereof, as fully and completely as we could or would do if personally present and acting.

In witness whereof we hereunto sign our names, and affix our seals, this 19th day of February, A. D. 1850.

The words "on behalf of the defendants," interlined before signing, and "Joseph A. Swett, esq., or either of them," and "or either of them," interlined before signing.

PETER MacGREAL, [L. S.]
W. S. SPENSER, [L. S.]
R. P. JONES. [L. S.]

Signed, sealed, and delivered, in presence of—
JAMES A. MILLER,
CHARLES LEONARD.

The foregoing power of attorney was acknowledged before me, this 19th day of February, 1850, in the town of Brazoria.

CHARLES LEONARD,
Com'r U. S. district court, district of Texas.

The UNITED STATES OF AMERICA,
District of Texas.

I, Charles Leonard, commissioner of the United States district court, for the State of Texas, do hereby certify, that Peter MacGreal and Richard P. Jones, whose names are signed to the foregoing power of attorney, qualified before me, and that said Peter MacGreal is worth ten thousand dollars, and that said R. P. Jones is worth twenty-five thousand dollars, over and above all debts and liabilities, and exclusive of all such property as is exempt from execution.

CHARLES LEONARD,
Commissioner U. S. D. C., district of Texas.
Brazoria, February 19, 1850.

And on the same day, that is to say, on the 18th day of March, A. D. 1850, the defendants filed the following certificate, to wit:

The STATE OF TEXAS, *County of Brazoria.*

I, M. B. Williamson, county clerk of the county of Brazoria, do hereby certify, that Richard P. Jones would be received and considered as sufficient security for at least twenty-five thousand dollars, in the county court of said county; and I also certify, that Peter MacGreal would be received and considered by me as sufficient security for the sum of ten thousand dollars.

In testimony whereof I have hereto set my hand, and the seal of the county court of Brazoria county, this 20th day of February, A. D. 1850.

M. B. WILLIAMSON,
Clerk county court, Brazoria county.

And afterwards, to wit, on the third day of April, A. D. 1850, the

complainants, by their counsel, filed their motion for a retaxation of complainants' costs in this suit, in words and figures as follows, to wit:

UNITED STATES DISTRICT COURT,
District of Texas.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss. } Spring term, 1850.

And now at this day, that is to say, on the 3d day of April, A. D. 1850, come the complainants, and move this hon. court for a retaxation of the complainants' costs, taxed by the clerk in this cause, and that the court prescribe the basis upon which the said costs shall be taxed, and for such other and further rule or order as the court may direct.

F. H. MERRIMAN and
L. SHERWOOD,
Sols. &c., for compt's.

And afterwards, on the twenty-sixth day of June, A. D. 1850, on motion of Peter MacGreal, esq., made in open court, the following order was made by the court, and entered on the minutes thereof, to wit:

TYACK and MURRAY
vs.
NEWELL and DOSS.

On motion of Peter MacGreal, esq., it is ordered that he have leave to withdraw from the files in this cause the power of attorney from Stephen W. Doss to said MacGreal, dated 13th day of March, 1849. It is further ordered that the clerk take a copy to be certified by him as a true copy, which is to be filed and used for all purposes as if it were the original.

UNITED STATES OF AMERICA,
District court of the United States, district of Texas, ss.

WILLIAM TYACK and Lindley Murray
vs.
STEWART NEWELL and Stephen W. Doss. } In chancery.

I, James Love, clerk of the district court of the United States for the district of Texas, certify, that the foregoing five hundred and fifty-one pages, numbered from one to five hundred and fifty-one inclusive, is a true and complete transcript of the record and all the proceedings had in the above entitled cause.

In witness whereof I have hereunto subscribed my name as clerk aforesaid, and caused the seal of court to be affixed, on this [SEAL.] 27th day of June, in the year one thousand eight hundred and fifty-one.

JAMES LOVE, *Clerk.*

UNITED STATES OF AMERICA,
Supreme Court.

WILLIAM TYACK and Lindley Murray, appellees,
vs.
STEWART NEWELL and Stephen W. Doss, appellants.

On appeal from the district court of the United States, for the district of Texas.

The clerk of the district court not having been able to complete the transcript of the record in the above entitled cause, so that the same could be filed in the Supreme Court in season for the December term, 1850, in consequence of the want of some papers missing from the files of the said district court, it is hereby stipulated that the same may be filed at any time before the first day of the December term, 1851, without prejudice to the rights of either party; the object of this stipulation being to enable the clerk to supply the deficiency of the said transcript of record before filing, either by obtaining the original papers, or inserting the substance of the missing papers by stipulation, in the transcript of the record.

GALVESTON, *February* 13, 1851.

L. SHERWOOD,
Attorney and of counsel for appellees.
OVID F. JOHNSTON,
Counsel for defendant Doss.
J. A. SWETT
Counsel for defendant Newell.

1848.

SUPREME COURT OF THE UNITED STATES.

No. 173.

JOHN PERKINS, PLAINTIFF,

vs.

EDWARD P. FOURNIQUET AND HARRIET J., HIS WIFE, AND MARTIN W. EWING AND ANNE S. EWING, HIS WIFE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

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E. P. FOURNIQUET et Ux. et al., complainants,
vs.
JOHN PERKINS, defendant.

Pleas before the honorable Samuel J. Gholson, district judge of the United States, at a circuit court of the United States, held at the town of Jackson, in and for the north circuit and southern district of Mississippi, at the November term, in the year of our Lord one thousand eight hundred and fifty.

Be it remembered, that heretofore, to wit, on the 19th day of October, A. D. 1847, John Perkins, by his solicitor, H. S. Eustis, filed the following transcript in the clerk's office of the circuit court of the United States, which is in the words and figures following, to wit:

Proceedings in the southern district chancery court, held at Mississippi city, in the county of Harrison and State of Mississippi, for the counties of Jackson, Harrison, Green, Hancock, and Perry, on the second Monday in August, being the ninth day of said month, in the year of our Lord one thousand eight hundred and forty-seven; the honorable James M. Smiley, vice chancellor of the southern district of the State of Mississippi, solely presiding; Thos. A. Hester, sheriff; and A. W. Richards, clerk.

Personally came and appeared in open court Daniel Mayes, W. A. Champlain, John Henderson, J. C. Mount, T. L. Lenly, D. W. Hurst, and R. Seal, who were sworn in open court as attorneys and counsellors at law of this court.

Daniel Mays, esq., presented to this court a license from William L. Sharkley, chief justice of the high court of errors and appeals of the State of Mississippi, to Robert N. Ogden, authorizing him to practise as an attorney and counsellor at law in the several courts of law and equity in this State, dated the 7th day of August, 1847, and moved that he be admitted to take the oath prescribed by law. Whereupon the said R. N. Ogden appeared in open court, and was sworn as an attorney and counsellor at law of this court.

(*Petition.*)

In the southern district chancery court of the State of Mississippi, at the August term thereof, 1847.

EDWARD P. FORNIQUET and Harriet J., his wife, and Martin W. Ewing and Anne S. Ewing, his wife,
vs.
JOHN PERKINS.

To the honorable James M. Smiley, vice chancellor of the State of Mississippi, for the southern district.

The petition of John Perkins, defendant in the above entitled suit, humbly showeth, that he is a citizen resident of the State of Louisiana,

as is shown by the complainant's bill, and he is ready to verify by proofs, and that the matter in dispute in this suit exceeds the sum of value of five hundred dollars, as is also shown by said bill; and he prays that this cause may be removed for trial into the next circuit court of the United States, to be held at Jackson, in the district of Mississippi, on the first Monday in November next, and he hereby offers to furnish good and sufficient surety, in such sum as your honor may direct, for his entering in said circuit court, on the first day of its next session, or sooner, copies of the process against him in this suit, and his appearance; and your petitioner, as in duty bound, &c.

R. N. OGDEN,
Attorney and solicitor for defendant, John Perkins.

Filed in open court, August 9th, 1847.
A. W. RICHARDS, *Clerk.*

EDWARD P. FORNIQUET and Harriet J. Forniquet, his wife, and Martin W. Ewing and Ann S. Ewing, his wife,
vs.
JOHN PERKINS.

In the southern district chancery court of the State of Mississippi, at the August term, A. D. 1847.

In this case the defendant, John Perkins, having at the time of entering his appearance in this court filed his petition praying for the removal of this cause for trial into the circuit court of the United States, for the district of Mississippi, and offered his bond with R. N. Ogden and W. H. Tegarden, as his sureties for entering in said court on the first day of its next session, viz., the first Monday of November next, copies of the process against him in this suit and his appearance in said circuit court, it is on motion of defendant, by his attorney and solicitor, R. N. Ogden, ordered by the court that the amount of said bond be fixed at the sum of five hundred dollars, and that the sureties affixed be approved and accepted, and that this cause be removed into the said circuit court, and that all proceedings herein be copied by the clerk.

(*Bond.*)

Know all men by these presents, that we, John Perkins, as principal, and Robert N. Ogden and W. H. Fergarden, as his sureties, are held bound in favor of Edward P. Forniquet and Harriet J. Forniquet, his wife, and of Martin W. Ewing and Ann S. Ewing, his wife, in the sum of five hundred dollars, the payment of which to them, their heirs, executors, administrators, and assigns, shall be well and truly made by us, our heirs, executors, and administrators. Whereas on the ninth day of August, 1847, the said John Perkins presented his petition to the honorable the southern district chancery court of the State of Mis-

sissippi, sitting at Mississippi city, praying that a certain suit in chancery therein pending, in which said Fourniquet and wife and said Ewing and wife are complainants, and the said John Perkins, is defendant, may be removed for trial to the circuit court of the United States, for the district of Mississippi, to be holden at Jackson, in the State of Mississippi, on the first Monday of November next. and has obtained from said court an order granting said prayer on the execution and filing of this bond. Now, therefore, the condition of this bond is such, that if the said John Perkins shall [have] in the said circuit court on or before the first day of its next session, copies of the process against him in this suit, and his appearance there, then and in that case this bond shall be void, and otherwise remain in full force and virtue in law.

Witness our hands and seals at Mississippi city, on this day of August, A. D. 1847.

JOHN PERKINS,
By R. N. OGDEN, *his agent*, [SEAL.]
R. N. OGDEN, *his security*, [SEAL.]
WM. H. FEGARDEN. [SEAL.]

Filed in open court August 9, 1847.

A. W. RICHARDS.

EDWARD P. FOURNIQUET and Harriet J. Fourniquet, his wife, and Martin W. Ewing and Ann S. Ewing, his wife,
vs.
JOHN PERKINS.

In the southern district chancery court of the State of Mississippi, at the August term thereof, A. D. 1847.

To the honorable James M. Smiley, vice chancellor of the State of Mississippi, for the southern district.

Your orators Edward P. Fourniquet and Harriet J. Fourniquet, his wife, and Martin W. Ewing and Ann S. Ewing, his wife, citizens of the State of Mississippi, as heirs of their mother, Mrs. Mary Perkins, and of their deceased brother, Benjamin Silas Bynum, humbly complaining, show to your honor, that John Perkins, then and now a citizen of the State of Louisiana, but at present temporarily within this State, on the 12th day of August, A. D. 1818, in the parish of Concordia, and State of Louisiana, intermarried with Mrs. Mary Bynum, widow of Benjamin Bynum, the mother of your orators, Harriet J. and Ann S.

Your orators show, that at the date of the marriage aforesaid the defendant and his wife were both citizens of the State of Louisiana, and continued their residence in the said State for a length of time thereafter.

But your orators charge, and so the facts are, that the said John Perkins, under the alleged pretence of obtaining a more healthy location

for his family, and still retaining his legal and political domicil in Louisiana, about the year 1818 or 1819 removed his family to the vicinity of Natchez, in this State, where he laid out and expended large sums of money in acquiring property, and making permanent improvements, to an amount equal to the sum of thirty-three thousand dollars, or thereabouts, as follows: For the purchase of a piece of land from Arthur Mahan, on the 30th October, A. D. 1818, containing 100 acres, more or less, for the sum of nine thousand nine hundred and twenty-six dollars, $9,926.00, of which sum the defendant paid, on the 1st of February, 1819, two thousand dollars, $2,000; 2d of June, 1821, two thousand dollars, $2,000; and June, 1822, two thousand dollars, making the sum total of eight thousand dollars, $8,000, as will more fully appear [upon] reference being had to the mortgage of Perkins and wife to Mahan, marked A, which will be made an exhibit at the hearing of this cause.

Your orators further show, that the defendant erected upon the said land an expensive residence called the Briars, at a cost of twenty-five thousand dollars, ($25,000,) as your orators are informed and believe. In addition to the foregoing outlay, the defendant purchased from Elihu Hall Bay, on the 5th of January, 1819, 2,100 acres of land, in Claiborne county, Mississippi, for the sum of five thousand dollars, $5,000; also on the day of March, 1824, purchased from Sugar Turner 500 acres of land in the same county, for the sum of one thousand dollars, $1,000; also on the 3d of March, 1823, the defendant purchased from William T. Parker and wife a lot of ground in the city of Natchez, for the sum of six hundred dollars, $600. All of which produce the aggregate amount of thirty-nine thousand six hundred dollars, $39,600, or thereabouts, invested by him during the continuance of the coverture aforesaid.

Your orators show, that the marriage of defendant with your orators' mother was dissolved by the death of Mrs. Perkins on the 12th of August, A. D. 1824, and that at the dissolution of the marriage the aforesaid property remained with the defendant, and that he has since disposed of the same, or a great part thereof, and has appropriated the proceeds to his own use and benefit, utterly denying that your orators and their co-heirs have any interest in the sums of money so invested by him.

Your orators as they are advised and believe further show, that the defendant had no productive or available means which enabled him to purchase the property aforesaid, but that the money paid by him for said property was derived from a large cotton estate possessed by him, and situated in the parish of Concordia and State of Louisiana, the proceeds of which, by the rights of marriage and the laws of said State, enured to the use of said Perkins and wife, jointly. That by reason of defendant's marriage with orator's mother, in the said State of Louisiana, and the productive property of the spouses having remained there, and having been there administered, a community of acquests and gains, (as understood by the laws of the State of Louisiana,) ex-

isted between the spouses; and that defendant upon the death of his wife became liable to her heirs for one half of all the profits and the property acquired during the continuance of the marriage, and your orators charge, that for that portion of the proceeds of the Louisiana plantation withdrawn from that State, in money, and invested in this State in property, the defendant acted in the said investment as trustee for your orators and their co-heirs; and that he is liable to them on their election, which election they now make, for their respective shares, in cash, with lawful interest thereon of 8 per cent. per annum, from the dissolution of the community, in August, 1824, until the coming in of the report.

Your orators might have believed that the just and proper motive of improving the health and comfort of his family was that only which actuated the defendant, Perkins, in his expenditure for his house establishment in this State, had said Perkins showed a willingness that the money, so invested, should continue and abide the equitable rights of your orators' mother, as the same attached to the partnership capital from which it was drawn. But that said Perkins has heretofore refused and denied, and pretends that he has obtained legal advantages by the transfer and investments aforesaid, wholly incompatible with a fair and honorable motive, and still persists in claiming that, by virtue thereof, the property of said investment has become solely and exclusively his own. But your orators show, that all such investments aforesaid, in landed estates, other than that of his known establishments in Natchez, had no proper result whatever in promoting the comfort of the family, and from the conduct and attitude since assumed by said Perkins in relation to all said investments, your orators are bound to believe, and so charge the truth to be, that the object of said defendant in said investments was to give himself unjust advantage over his wife's interest therein, and to cheat and defraud her and her heirs of their just proportions in the capital so invested, in abuse of the trust confided to him as head of the marital community.

Your orators represent, that at the death of Mrs. Perkins, there were living four children by the first husband, Benjamin Bynum, and three children by her marriage with the defendant, of whom three [of] Bynum's children and two [of] Perkins' children still survive.

That since the death of Mrs. Perkins, one of the Perkins' children, viz., Sarah Hennthra Perkins, and one of the Bynum children, viz., Benjamin Silas Bynum, have died unmarried and without children, leaving all the rights of inheritance to be disposed of by the law. They charge that their mother, Mary Perkins, was entitled to one-half of all the money invested by defendant as aforesaid, and that her three children by Perkins, and her four children by Bynum, were all equally interested as her heirs to her half of said investment. They charge also that Mary E. Eskridge, late Bynum, and John Perkins and William Perkins, all adults and co-heirs with these complainants, do not concur with complainants in the institution of this suit, and for that cause are not made parties thereto. That your oratrixes, Harriet For-

niquet and Ann S. Ewing, each represent for themselves a one-seventh share, and each one-third of a seventh of the share of their deceased brother, Benjamin Silas Bynum, as being two of the three heirs at law representing his estate, and for all such rights and interests your orators now sue.

Your orators show that all the foregoing claims, besides others wholly unknown to them, but as they verily believe well known to the said defendant, they are justly entitled to receive by virtue of their rights aforesaid, and which they had well hoped the said Perkins would have made full disclosure and full settlement of with your orators without recourse to law, as he was reasonably bound, and has been often requested to do. But now, so it is, the said Perkins fraudulently contriving by nature of false pretences, craft, and stratagems, to injure and oppress your orators, and to conceal and withhold from them their rights, sometimes contend that he has fully paid and satisfied your orators for all their respective shares derived by them from the estate of their mother, and at other times pretending that by virtue of the investments of the proceeds of the Louisiana estate in the State of Mississippi as aforesaid, your orators have lost all legal right or property in the same, or the amount of money so invested in fraud of the rights of his wife.

But more particularly does the said Perkins pretend, that certain receipts and releases obtained by the defendant from your orators, have settled and satisfied said demand upon him, and foreclose your orators from all further redress in the premises.

But in reference to the said receipts, your orators represent that they were obtained by the fraud, concealment, and circumvention of the defendant; and your orators most solemnly declare, that the matter and things in this bill set forth were not accounted for by the defendant to your orators at their execution of said receipts, nor at any time previous, or subsequent thereto, but the same was concealed and kept back by said defendant, and never yet accounted for; and should said defendant interpose any receipt or receipts of your orators in any form of bar to their recovery herein, then your orators require and demand that said defendant shall produce the account and the items thereof as rendered by him when such receipts were given, and for which they were obtained.

And your orators further show, that as to the receipt of Forniquet and wife, it is null and void, for this, to wit, that the said Harriet Bynum, now Harriet Forniquet, was born on the 14th January, 1814, and the receipt above referred to, was executed when your oratrix Harriet was a minor, and under twenty years of age, and because executed as a release under seal by a femme covert to divest and conclude her separate and sole estate without *without* an acknowledgment thereof before a proper officer, separate and apart from her husband.

Wherefore your orators thus affirming their claims as aforesaid, protest against the pretences of the defendant, all of which with the actings and doings of said defendant tend to the manifest injury and op-

pression of your orators; and forasmuch as they are without adequate relief at law, and can only be relieved in a court of equity, where matters of trust are particularly cognizable: Therefore may it please your honor to award to your orators the writ of subpœna, directed to the defendant, commanding him to be and appear at the next August term of this honorable court, to be holden at Mississippi City, in the county of Harrison, at the court-house thereof, on the second Monday , A. D. 1847, there to be and remain and abide by the further orders and decrees of this court in the premises; and that the said defendant may upon his corporal oath full, true, and perfect answers make to all matters and things herein alleged against him, as fully as if herein again set forth, and he specially interrogated in relation thereto; and that he may distinctly set forth and answer the following questions:

1st. Did you or did you not, on the 12th day of August, 1818, intermarry with Mrs. Mary Bynum, widow of Benjamin Bynum, and mother of complainants, Ann S. Ewing and Harriet J. Forniquet?

2d. Was or was not said marriage solemnized in the parish of Concordia, and State of Louisiana; were you or not at the time of said marriage both citizens of Louisiana?

3d. How many children had your wife by her first husband, Benjamin Bynum; how many by her marriage with you; state their names and ages, and when and where they died, and whether they were married or single when they died; and also whether all or any of them left any children.

4th. Was or not Harriet J. Bynum, now Forniquet, born on the 14th January, 1814; where was Benjamin Silas Bynum born; when did he die?

5th. Did you not purchase from Arthur Mahan and wife the tract of land, as in this bill set forth, and pay for the same on or about the time specified the sums as specified?

6th. Did you or not erect on the said land an expensive residence called the Briars; how much did the said residence cost you? In answering said question, include the building of the house, the levelling of the grounds, the fencing, cleaning, and all other expenses incurred by you in completing the said residence.

7th. Did you not purchase from Elihu Hall Bay, on the 5th January, 1819, the tract of land as in this bill set forth, and pay for the same the sum of $5,000?

8th. Did you not purchase from Sugar Turner, in the month of March, 1824, for the sum of $1,000, the tract of land as in this bill set forth?

9th. Did you not purchase from W. L. Parker and wife the lot of land as in this bill set forth, and pay therefor the sum of $600?

10th. When did you first occupy the Briars with your family?

11th. Did or did not Mrs. Perkins die on the 18th August, 1824?

And your orators pray process of subpœna against said defendant, commanding him to appear at the August term of this honorable court, to [be] held at the court-house at Mississippi city, in the county of Har-

rison, on the second Monday of August, A. D. 1847, and to render his answer under the rules of court, and all due penalties of the law and the premises considered; that your honor will decree that the defendant shall account with your orators according to the premises set forth; and that he pay to your orators the amount resulting, with interest of 8 per cent. per annum from the death of their mother, on the 18th August, 1824; and that your honor will grant your orators all such other and further relief as this cause shall warrant, and to equity shall seem meet.

And as in duty bound your orator will ever pray, &c.

JOHN HENDERSON,
Complainant's solicitor.

Filed June 2, 1847.

A. W. RICHARDS, *Clerk.*

"*Subpœna.*"

THE STATE OF MISSISSIPPI,
Southern district chancery court
of the State of Mississippi, to wit:

TO JOHN PERKINS:

For certain causes offered before us in our southern district chancery court of the State of Mississippi, we command and strictly enjoin you, that laying all other matters aside, and notwithstanding any excuse, you personally appear at a southern district chancery court, to be holden at the court-house in Mississippi city, in Harrison county, on the 2d Monday in August next ensuing, to answer a bill of complaint exhibited against you by Edward P. Forniquet and Harriet J., his wife, and Martin W. Ewing and Ann S., his wife, complainants in our said court; and further to do and receive what our said court shall have considered of this behalf; and that you shall in nowise omit, under the penalty of one hundred dollars, as well as the consequences that may fall thereon, and have then there this writ.

Witness the honorable James M. Smiley, vice chancellor of the southern district of the State of Mississippi, the 2d Monday in
[L. S.] February, A. D. 1847, and the seal of said court, issued the 4th day of June, A. D. 1847.

To the sheriff of Claiborne county to execute and return.

A. W. RICHARDS, *Clerk.*

"*Sheriff's return.*"

Executed on John Perkins, and gave him a copy by request, July 17, 1847. Returned into clerk's office the 5th of August, 1847.

R. M. MORE, *Sheriff,*
By DAN'L S. DOHAN, *D. S.*

THE STATE OF MISSISSIPPI,
Southern district, chancery court.

I, A. W. Richards, clerk of the southern district chancery court of the State aforesaid, do hereby certify, that the foregoing pages contain a true and perfect copy of the petition, bond, bill and proceedings, subpœna, and sheriff's return thereon, as now remains on file in my office.

[L. S.] In testimony whereof I have hereunto set my hand and seal of said court, this 10th day of August, A. D. 1847.

ABRAHAM W. RICHARDS,
Clerk southern district chancery court.

"*Answer.*"

In the United States circuit court for the southern district of Mississippi.
In chancery.

To November term, 1847.

EDWARD P. FOURNIQUET and Harriet, his wife, and MARTIN W. EWING and Ann S., his wife, complainants,
vs.
JOHN PERKINS, defendant.

And the said defendant, John Perkins, who is a citizen of the State of Louisiana, reserving to himself the benefit of all exceptions, &c., in answer to so much and such parts of said bill as he is advised it is material for him to answer to, answering saith: That true it is this respondent intermarried with Mary Bynum, widow of Benjamin Bynum, the mother of the complainants, Harriet and Ann; the marriage took place in the State of Louisiana on the 12th day of August, in the year 1818, this respondent and said Mary being at that time residents of that State. Respondent states the fact to be, that shortly after the said marriage, and before the termination of the said year, 1818, respondent moved with said wife to the State of Mississippi, and that they then had their civil domicil within said State of Mississippi, for and during the whole time of their matrimonial *convention*, which terminated with the decease of the said Mary, on or about the 12th day of August, in the year 1824. Respondent retained some political rights in Louisiana after his removal with his family to the State of Mississippi, until the 8th June, 1821; but states the fact to be, that his civil domicil was changed as aforesaid, the year of the marriage, and that such change took place, not only voluntarily upon the part of his said wife, Mary, but in fact in pursuance of an understanding had between them before marriage, with a view of obtaining a more healthy residence and greater facilities for educating her children of the Bynum family. By reason of their domicil being in the State of Mississippi, respondent has always acted

under the belief, and now submits to the court, by the way of defence to the claim of complainants, that there was no community of acquests and gains of property lying in Louisiana, between respondent and his said wife, Mary, under the law of Louisiana. Respondent further submits, by way of defence, that there is no such law of community in Mississippi; further, that if, as alleged in said bill, the domicil was not changed, still this respondent, as head of the said marital community, is, under the laws of Louisiana, entitled to the absolute disposal of the acquests and gains of any and all property then held in community, without liability to account for the same to the wife or her legal representative. Respondent further answering, denies the fact that his investments in the State of Mississippi, or any portion thereof, recited in the said bill, were made with moneys to *whom* the said Mary has any title legal or equitable whatever under the laws of either the States of Louisiana or Mississippi. Respondent denies the truth of the allegation "that he had no productive property or available means in the State of Mississippi, which enabled him to purchase the property aforesaid;" but respondent will be prepared to show his resources, as far as the same can be done at this late day, if these complainants are entitled to this discovery, when the court shall have considered the matters of defence previously set up in this answer.

Respondent positively denies that any investments were ever made by him in this State with the object of gaining unjust advantage over his wife's interest, or of cheating or defrauding her or her heirs in any manner, or out [of] any property whatever. Respondent further answering by way of defence to said bill, states, that whatever is claimed by said bill is claimed as a personal debt due from respondent to the estate of said Mary, as will be seen by reference to said bill; and your respondent submits that, for such a claim he is answerable to the legal appointed executor or administrator who may be authorized by the laws of Mississippi to collect and administer said estate within said State, and to no other party whatsoever, either in law or equity. Respondent further answering states, that he has been fully released and discharged by said complainants from all claims on account of the estate of the father and the mother of said Harriet and Ann, by formal releases executed by said parties, which are herewith exhibited, marked Exhibit No.

. Your respondent relies upon said releases as if formally pleaded in bar. Respondent distinctly denies that said instruments were obtained by fraud or concealment of any fact whatever; and respondent states the fact to be, that his investments in the State of Mississippi were as well known to complainants at the date of said instruments as at the present time. Respondent answers the special interrogatories as follows, viz:

1st. I did so intermarry.

2d. The marriage was solemnized in the parish of Concordia, in the State of Louisiana, of which we were both citizens.

3d. I always understood there were six children, viz., Nancy, Benjamin, Mary, Henry, Harriet, and Frances. I have no record of

their ages. Mrs. Ewing I believe to be upwards of forty; Benjamin died in his 23d year; Mary, now Mrs. Eskridge, next in age; then Henry, Harriet, and Frances. Henry died in Louisiana, on Lake Concordia, in 1817; and Frances at the cottage, then defendant's residence, near Natchez. Benjamin died at his residence in Claiborne county, Mississippi, unmarried. Mrs. Perkins had three children after her marriage with respondent, viz., John, William, and Sarah; the latter died an infant, in 1825, in the State of Kentucky, after the death of Mrs. Perkins, and when respondent was there with his family.

4th. Respondent has no family record to show the fact that the complainant, Harriet, was born on the 14th January, 1814; her sisters say that was her birth-day.

5th. I did.

6th. Respondent did erect on the land a handsome residence; it was the work of ten or more years of labor, commenced in 1820 or 1821 and finished some years after the death of Mrs. Perkins, by hiring labor by the month, principally. During that time, however, the sickly months, July, August, September, and October, and in the dead of winter, the work was usually suspended. Respondent has no account, and never kept any, of the cost of the buildings and improvements. It was finished in a suitable style for the accommodation of his family in ; and after the marriage of his youngest step-daughter, the complainant, Harriet, he sold it.

7th. I did; the British claim conflicted with a Spanish title which [I] previously held to the same land.

8th. I did; and afterwards made a donations of the same land to the complainant, Fourniquet, for the benefit of [his] wife, the complainant, Harriet.

9th. I did purchase a lot of W. L. Parker, but paid only $200 for it.

10th. I moved into the house at the Briars in the spring of 1822. It was in a rough state, and *responded* moved into it, to be near the men at work on it.

11th. Respondent was not present at the death of Mrs. Perkins. He had gone to Baltimore after his two eldest daughters; one of the complainants and her next oldest sister. Respondent was informed she died on the 12th August, 1824.

Respondent further answering states, that he is advised, and submits that if, as claimed in complainants' bill, the investments in real property in the State of Mississippi were made in whole and in part out of moneys belonging to his said wife, that still this respondent is entitled to said property as tenant by courtesy for and during the term of his natural life, and respondent claims the benefit of said defence as if pleaded in bar to said bill; and respondent having answered, &c.

JOHN PERKINS.

SOUTHERN DISTRICT OF MISSISSIPPI,
Adams county.

Personally, before the undersigned commissioner, appeared John

Perkins, the above named respondent, who being by me duly sworn, says on oath that the matters and things stated in the foregoing answer, so far as stated by his own knowledge, are true; and so far as stated on the information of others, he believes them to be true.

JOHN PERKINS.

Sworn to and subscribed before me, at Natchez, this 4th day of November, A. D. 1847.

CH. A. LACOSTE,
Comm'r of the U. S. circuit court south. dist. Miss.

Replication.

E. P. FOURNIQUET and wife, and M. E. Ewing and wife,
vs.
JOHN PERKINS.

Circuit court of the United States, for the southern district of Mississippi, to May term, A. D. 1848.

And now at this term came the said complainants in the above entitled suit, and by leave of the court first had and obtained, do reply to the answer of the defendant filed herein, and for replication say, that complainants should not, by reason of anything in said answer set forth and contained, be barred or precluded from having and maintaining their cause of complaint against said defendant as in their said bill set forth. And said complainants hereby, denying all such matters of discharge and defence as is relied upon in said answer, and reaffirming the charges and allegations of their said bill of complaint, will prove and maintain the same as this court shall sanction and approve; and therefore they pray as heretofore, &c.

JOHN HENDERSON,
Sol. for complainants.

The following evidence was read on the trial of said cause, to wit:

Deed from Arthur Mahan et ux. to John Perkins.

This indenture, made the thirteenth day of October, in the year of our Lord one thousand eight hundred and eighteen, between Arthur Mahan and Catharine, his wife, of the county of Adams and State of Mississippi, of the one part, and John Perkins, of the parish of Concordia, in the State of Louisiana, witnesseth: That the said parties of the first part, for and in consideration of the sum of nine thousand nine hundred and ninety-six dollars, to them in hand paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged; and the said party of the second part, his heirs, executors, and administrators, forever released and discharged therefrom by these presents, have granted, bargained, sold, conveyed, and confirmed, and by these presents do

grant, bargain, sell, convey, and confirm, unto the said party of the second part, his heirs and assigns, forever, all that tract, piece, and parcel of land, situated, lying, and being in said county of Adams, on the river Mississippi, about one mile below the old Spanish fort Pannure, in the city of Natchez, containing ninety-nine acres and twenty-six hundredths of an acre, and bounded as follows, to wit: Beginning at the bank of said river, at a cotton wood tree below the mouth of a small bayou, and run[ning] up the bayou, in the middle of the channel, courses and distances as follows: East 4 ch. 50 l., N. 60° E., 3.50, So. 55° E., 3.74, No. 70° E., 1.50, So. 55° E., 2.42, No. 82 E., 2.16, So. 75 E., 4.23, No. 73 E., 1.00, No. 60° E., 1.72, No. 77° E., 1.15, No. 55° E., 0.50, east 1.50, No. 60° E., 2.91, No. 72° E., 2.00, No. 55° E., 1.50, So. 84° E., 3.50, No. 82° E., 1.00, No. 66° E., 0.88, So. 68 E., 1.45, No. 88 E., 1.00, So. 61 E., 1.00, So. 15 E., 1.00, So. 31 E., 4.21, So. 24 E., 4.54. Leave the bayou on the left, set a stake, from which a white oak bears south 6° E., ten links, and white oak bears No. 6 W., 8 links; thence north 65 to an elm, 1.69, courses on Green's, (but more properly the line of James Andrews, deceased,) marked XXIII; thence No. 45° W., with said line, 29.75, to a stake; thence No. 70° W., 22.29, to a stake in the river aforesaid; thence down the said river, with the meanders thereof, to the beginning, being part of a tract of land granted by the Spanish Government to Richard Bane, by letters patent bearing date the 20th day of April, 1784, (the twentieth day of April, seventeen hundred and eighty-four;) together with all and singular the appurtenances, hereditaments, privileges, and advantages, whatsoever, unto the above described premises belonging, or in anywise appertaining; and also all the estate, right, title, interest, property, and claim whatsoever, either at law or in equity, of them, the said parties of the first part, of, in, or to the same. To have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, forever.

And the said parties of the first part, for themselves, their heirs, executors, and administrators, do grant, covenant, promise, and agree, to and with the said party of the second part, his heirs and assigns, that they, the said parties of the first [part,] and their heirs, the above mentioned and described premises, and every part thereof, with appurtenances, unto the said party of the second part, his heirs and assigns, against the said parties of the first part, and their heirs, and against all and every other person or persons lawfully claiming or to claim by, from, or under them, or any of them, shall and will warrant, and by these presents forever defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year above written.

his
ARTHUR ✕ MAHAN, [SEAL.]
mark.
CATHERINE MAHAN. [SEAL.]

Signed, sealed, and delivered in presence of—
E. TURNER,
JAMES STEIN.

STATE OF MISSISSIPPI, *Adams county, ss.*

Personally appeared before the undersigned, Elijah Smith, chief justice in and for said county, the within named Arthur Mahan and Catherine Mahan, his wife, the grantors to the within deed, who acknowledged that they signed, sealed, and delivered the same, as their free and voluntary act and deed, for the uses and purposes therein mentioned; and the said Catherine Mahan, being examined separate and apart from her said husband, acknowledged that she signed, sealed, and delivered the same as her voluntary act and deed, and without any fear or compulsion of her said husband, and that she relinquishes all right of dower or thirds.

Given under my hand and seal, this 31st October, 1818.

ELIJAH SMITH. [SEAL.]

I certify, that the within and foregoing deed was received into my office to be recorded, this 2d day of November, 1818.

WOODSON WREN, *Clerk.*

THE STATE OF MISSISSIPPI, *Adams county.*

I, Richard A. Inge, clerk of the probate court of said county, do hereby certify, that the foregoing three pages contain a true, perfect, and complete transcript of the record of the original deed, as fully and completely as the same remains of record in my office.

In testimony whereof I have hereunto set my hand and the seal of said court, at Natchez, this 8th day of May, A. D. one thou-
[L. S.] sand eight hundred and forty-nine.

RICHARD A. INGE, *Clerk.*

THE STATE OF MISSISSIPPI, *Adams county, ss.*

I, Reuben Bullock, judge of the probate court (sole and presiding) of the county of Adams, State aforesaid, do hereby certify, that Richard A. Inge, whose genuine signature appears to the foregoing certificate and attestation, is, and was at the date hereof, clerk of said court, duly elected, qualified, and commissioned; that his said certificate and attestation are in due form of law; and that all of his acts in the premises are and ought to be entitled to full faith and credit in judicature and thereout.

Given under my hand and seal, the 8th day of May, A. D. 1849.

R. BULLOCK. [SEAL.]

Deed from John Watt and wife to John Perkins.

This indenture, made and entered into this 15th day of June, A. D.

1833, between John Watt and Anna M. Watt, his wife, of the city of Natchez and State of Mississippi, of the first part, and John Perkins, of the county of Adams and State aforesaid, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the debt hereinafter mentioned to be secured, and of the sum of one dollar, to them in hand paid by the said John Perkins, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and conveyed, and do by these presents grant, bargain, sell, and convey, to the said John Perkins, all that certain tract or parcel of land situated in the county of Adams and State of Mississippi, about one mile below the Spanish fort Panmure, containing fifty acres, being part of a tract of ninety-nine $\frac{66}{100}$ acres, conveyed to the said Perkins by Arthur Mahan and wife, by deed dated October 30, 1818, and particularly described in a plat and survey, signed C. C. Stone, dep. surveyor, annexed to a deed of even date with these presents, from the said John Perkins and wife to the said John Watt. The said fifty acres to be bounded as follows, to wit: Beginning at post on Greer's, or Andrews' line, at the end of the upper or northern line of said tract, from the river, thence to the elm described in said plat, as marked XXIII, (reversing the description from the said post,) thence along the channel of the bayou described in said deed from Mahan and wife, as making out from the Mississippi to the mouth of the first large bayou, or gully, from the river, which makes out of the said bayou described in said deed of Mahan and wife; thence up the said bayou, or gully, and to intersect the upper northern line of said tract of 99 $\frac{66}{100}$ acres, so as to include the quantity of fifty acres, hereby intended to be conveyed, and to include the dwelling-house, kitchen, stables, and all other outbuildings attached to the present residence of said Perkins, called the Briars. To have and to hold the same to the said John Perkins, his heirs and assigns forever: Provided, nevertheless, that if the said John Watt, his heirs, executors, administrators, and assigns, shall well and truly pay to the said John Perkins the sum of ten thousand dollars, secured by his promissory notes for that sum, bearing even date with these presents, payable on the 1st January, A. D. 1841, on the day the said note shall become due and payable, then this deed shall be void, otherwise shall remain absolute.

In testimony whereof the said parties of the first part have hereunto set their hands and seals, the day and year above written.

JOHN WATT, [SEAL.]
ANNA M. WATT. [SEAL.]

THE STATE OF MISSISSIPPI,
Adams county, *ss.*

Personally appeared before the undersigned, justice of the peace in and for the county aforesaid, John Watt and Anna M. Watt, his wife, the *grators* to the foregoing deed, who acknowledged that they signed, sealed, and delivered the same as their voluntary act and deed, for the

purposes therein mentioned. And the said Anna M. being examined by me privately and apart from her said husband, acknowledged that she signed, sealed, and delivered the same as her voluntary act and deed, freely, without any fear, threats, or compulsion of her said husband.

Given under my hand and seal this 17th day of June, 1833.

JAMES CARSON. [SEAL.]

I certify the within and foregoing deed was received into my office, to be recorded, on the 17th day of June, anno domini 1833.

F. WOOD,
Clerk probate court.

The note for the sum called for in this mortgage has been paid, and mortgage made void. March 27, 1841.

JOHN PERKINS.

Attest: CHARLES SHELDEN.

THE STATE OF MISSISSIPPI,
Adams county, ss.

I, Richard A. Inge, clerk of the probate court of said county, do hereby certify, that the foregoing two pages and one-half contain a true, perfect, and complete transcript of the record of the original mortgage, and of the endorsement of satisfaction thereon, as fully and completely as the same remains of record in my office.

In testimony whereof I have hereunto set my hand, and the seal of said court, at Natchez, this 8th day of May, A. D. eighteen [L. S.] hundred and forty-nine.

RICHARD A. INGE, *Clerk.*

THE STATE OF MISSISSIPPI,
Adams county, ss.

I, Reuben Bullock, judge of probate court (sole and presiding) of the county of Adams, State aforesaid, do hereby certify, that Richard A. Inge, whose genuine signature appears to the foregoing certificate and attestation, is and was at the date thereof clerk of said court, duly elected, qualified, and commissioned; that his said certificate and attestation are in due form of law, and that all of his acts in the premises are and ought to be entitled to full faith and credit in judicature and thereout.

Given under my hand and seal, the 8th day of May, A. D. 1849.

R. BULLOCK. [SEAL.]

The following depositions, to wit:
One of Thos. Henderson.
" " Eli Montgomery.
" " John B. Walworth.

E. P. FORNIQUET and wife, and M. W. Ewing and wife,
vs.
JOHN PERKINS.

United States circuit court for the southern district of Mississippi, at Jackson, in equity sitting.

Interrogatories to be propounded to Thomas Henderson, John B. Walworth, and Eli Montgomery, witnesses on the part of the complainants residing in the city of Natchez, where answers, when taken, will be read in evidence upon the final hearing of this cause.

Interrogatory 1st. Do you know the parties to this cause; how long have you known the defendant, John Perkins?

Interrogatory 2d. Were you or not acquainted with defendant and his family during the lifetime of his first wife?

Interrogatory 3d. Were or not the defendant and Mrs. Mary Bynum both citizens of the parish of Concordia, Louisiana, and engaged in planting therein at the time of the marriage, that is, in August, 1818?

Interrogatory 4th. Shortly after the marriage, did or not the defendant remove his family from Lake Concordia to Natchez, and occupy rented dwellings until his residence, called the Briars, was completed?

Interrogatory 5th. After the removal to Natchez, did or not both parties continue to cultivate plantations in Louisiana; was or not the defendant's removal to Natchez made with a view to the better health of his family, and the schooling of his step-children?

Interrogatory 6th. Do you or not know that after the death of Mrs. Perkins, (that is, in August, 1824,) the defendant doubting the health of his residence, called the Briars, purchased a residence in Lexington, Kentucky; does or not the defendant now own and occupy a summer residence at or near the town of Columbus, in this State?

Interrogatory 7th. During the continuance of the defendant's first marriage, (that is, from August, 1818, to August, 1824,) was or not the defendant engaged in any business avocation or profession in the State of Mississippi, for the support of himself and his family; on the contrary, were or not the defendant's means of living derived from the produce of the Louisiana plantations?

Interrogatory 8th. Was or not the defendant, on or about the time of his marriage with Mrs. Bynum, the parish judge of the parish of Concordia; did you ever know him to exercise the rights of suffrage in the State of Mississippi?

Interrogatory 9th. Do you know, or can you set forth, any other matter or thing that will be of advantage to either of the parties in this cause, or material to the subject matter of this your examination? If yea, set forth the same as fully and at large as if particularly interrogated thereto.

E. P. FORNIQUET.

E. P. FORNIQUET and wife, and M. W. Ewing and wife,
vs.
JOHN PERKINS.

United States circuit court for the southern district of Mississippi, at Jackson, sitting in equity.

H. S. EUSTIS, esq., *Solicitor for defendant.*

SIR: You will please receive herewith interrogatories propounded on the part of complainants to Thomas Henderson et al.

In accordance with the agreement existing in this case, we name J. T. Middenhoff, esq., commissioner to take testimony of the said witnesses.

With respect,
E. P. FORNIQUET.

April 15, 1849.

E. P. FORNIQUET and wife, and M. W. Ewing and wife,
vs.
JOHN PERKINS.

United States circuit court for the southern district of Mississippi, in equity sitting, at Jackson.

By virtue of the authority in me vested as commissioner, appointed in the above stated case, and in compliance with the annexed notice, I have caused to come before me at my office, in the city of Natchez, on this Thursday, the 26th day of April, 1849, Thomas Henderson and Eli Montgomery, witnesses on the part of complainants, who, after being duly sworn to declare the truth, the whole truth, and nothing but the truth, to the best of their knowledge, remembrance, and belief, in answer to the annexed interrogatories, depose and say, to wit:

Thomas Henderson deposes and says:

Answer to the first interrogatory. I am acquainted with both parties to this suit.

Answer to second interrogatory. I was acquainted with him during the lifetime of his first wife.

Answer to the third interrogatory. I believe they were.

Answer to fourth interrogatory. I do not now recollect.

Answer to fifth interrogatory. I believe they continued to plant; I do not know of my own knowledge, *but* what object he had in removing to Natchez, but from the general tenor of my conversations with the defendant, I believe his object for removal was for the better health of his family and the schooling of his step-children.

Answer [to] sixth interrogatory. I do not know of my own knowledge, but have heard so as to both questions in this interrogatory.

Answer to seventh interrogatory. I do not know that he was engaged in any business, avocation, or profession, in the State of Mississippi; as to the means of his living, I do not know any thing about it.

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Answer to eighth interrogatory. I know he was at one time parish judge of the parish of Concordia, but whether at the time of his marriage I do not recollect; I never knew of his voting in the State of Mississippi.

Answer to ninth interrogatory. I know nothing of my own knowledge to the advantage of complainant or defendant further.

And further this deponent says not.

THOMAS HENDERSON.

H. S. Eustis, of counsel for defendant, being present, did not cross examine deponent.

Sworn to and subscribed before me, this 26th day of April, 1849.

J. W. MIDDERHOFF, [SEAL]
Commissioner.

Eli Montgomery deposes and says:

Answer to first interrogatory. I was acquainted with all the parties to this suit.

Answer to second interrogatory. I was acquainted with him during the lifetime of his first wife.

Answer to third interrogatory. They were both citizens of the parish of Concordia, and I knew Mrs. Bynum was planting, but whether Mr. Perkins or not, I do not know.

Answer to fourth interrogatory. I do not know whether they lived in Natchez before they moved to the "Briers."

Answer to fifth interrogatory. After their removal to Natchez, the plantation on Lake Concordia, the old Bynum place, was continued to be cultivated by them; the defendant's removal to Natchez was made with a view to better health of his family and the schooling of his step-children.

Answer to sixth interrogatory. As to the first part of this interrogatory, I do not know; as to the second part, I know he had a residence near Columbus, in the State of Mississippi, to which Perkins was in the habit of going to spend the summer season.

Answer to seventh interrogatory. I do not know that he carried on any business in the State of Mississippi; as to his resources, I knew nothing.

Answer to eighth interrogatory. I knew he was parish judge a short time previous to his first marriage, and he might have been at the time of his marriage, for I don't recollect the exact date; I do not know that he ever voted in Natchez or in this State.

Answer to ninth interrogatory. I know nothing more to the advantage of either party.

Cross examination by H. S. Eustis, esq., counsel for defendant.

1st cross interrogatory. What is the value of the "Briers?"

Answer to 1st cross interrogatory. Some years ago it was sold for the

sum of four thousand five hundred dollars; I should now estimate its value at from thirty to thirty-five hundred dollars. And further this deponent sayeth not.

ELI MONTGOMERY.

Sworn to and subscribed before me, this 26th day of April, 1849.

J. W. MIDDERHOFF, [SEAL]
Commissioner.

And now, this day, the 4th day of May, 1849, in further compliance with the annexed notice, I have caused to come before me, at my office, in the city of Natchez, John P. Walworth, a witness on the part of the complainants, who, after being duly sworn to declare the truth, the whole truth, and nothing but the truth, to the best of his knowledge, and belief, and remembrance, in answer to the annexed interrogatories, deponent says:

Answer to first interrogatory. I am acquainted with all the parties to this cause, and have known John Perkins (been acquainted with him) since the year 1819.

Answer to second interrogatory. I was.

Answer to the third interrogatory. In the year 1818 I was not acquainted with the parties; do, therefore, not know of my own knowledge whether or not they were both citizens or engaged in planting.

Answer to fourth interrogatory. At my first acquaintance with the parties, to wit, in 1819, the defendant and his family did reside in the city of Natchez, in the northern part of said city, to the best of my recollection; do not know whether said dwelling was rented or not; afterwards he removed to his residence, called the "Briers."

Answer to fifth interrogatory. I believe the said defendant cultivated his plantation in Louisiana, called "Somerset," and, to the best of my recollection, they continued the cultivation of their plantation on Lake Concordia. As to his views of removal to Natchez, I know nothing.

Answer to sixth interrogatory. I know nothing of his purchasing a residence in Kentucky; I have been informed by Perkins that he owns and occupies a residence near the town of Columbus, in this State.

Answer to interrogatory the seventh. I know of no business, avocation, or profession, in which said defendant was engaged in the State of Mississippi; I know of none other means of livelihood but the product of the Louisiana plantations; he was considered a gentleman of wealth.

Answer to eighth interrogatory. I do not know, of my own knowledge, whether at the time of his marriage with Mrs. Bynum, he was parish judge; I never knew him to exercise the right of suffrage in the State of Mississippi.

Answer to ninth interrogatory. And further this deponent says not.

J. P. WALWORTH.

H. S. Eustis, of counsel for defendant, being present, did not cross examine said witness Walworth.

Sworn to and subscribed before me, this 4th day of May, 1849.

J. W. T. MIDDOHOFF,
Commissioner, &c. [SEAL.]

I certify that the foregoing depositions of Thomas Henderson, Eli Montgomery, and John P. Walworth were taken before me, at the time and places above respectively named, in the presence of H. S. Eustis, esq., of counsel for said defendant, and that the said Henderson, Montgomery, and Walworth signed the same in my presence, and swore to it before me.

In testimony whereof I have hereunto subscribed my name, and affixed my seal, at Natchez, county of Adams, Mississippi, this fourth day of May, 1849.

J. W. T. MIDDENHOFF,
Commissioner, &c. [SEAL.]

The deposition of Woodson Wren, taken under the act of Congress.

UNITED STATES OF AMERICA,
Eastern district of Louisiana,
City of New Orleans, ss.

Be it remembered, that, on the fifth day of May, in the year of our Lord one thousand eight hundred and forty-nine, before me, Francis N. Haralson, a commissioner, duly appointed on , by the circuit court of the United States, in and for the eastern district of Louisiana, under and by virtue of the acts of Congress entitled "an act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20, 1812, and the act of Congress entitled "an act in addition to an act entitled "an act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,' passed March 1st, 1817," and the act entitled "an act to establish the judicial courts of the United States," passed September 24th, 1789, personally appeared Woodson Wren, a person of sound mind and lawful age, a witness for the complainants in civil suit now depending in the circuit court of the United States, in and for the southern district of Mississippi, wherein E. P. Fourniquet and wife and M. W. Ewing and wife are complainants, and John Perkins *in* respondent; and the said Woodson Wren, being by me first carefully examined, and cautioned, and sworn to testify the whole truth, and nothing but the truth, did depose and say: That he is acquainted with the parties to the present controversy; was acquainted with the respondent on or about the time of his marriage with Mrs. Bynum; about the time of respondent's marriage as aforesaid, or before that time, he was parish judge of parish of Concordia, in Louisiana; deponent never knew the respondent to be engaged in any business in the State of Mississippi, either as a planter, merchant, or otherwise; deponent knew that respondent had one or more planta-

tions in the parish of Concordia, Louisiana; and, as he did no active business in the State of Mississippi, deponent supposed he derived his support from said plantations; respondent lived in a rented house, called the Cottage, (where deponent visited him,) in the summer of 1819; afterwards respondent removed to a property of his own, called the "Briers," near Natchez, Mississippi; after residing at the "Briers" for some time, he, respondent, abandoned that place; and deponent now understands that respondent has a summer residence near Columbus, Mississippi. And further this deponent sayeth not.

WOODSON WREN.

Sworn to and subscribed before me, at New Orleans, this 5th day of May, A. D. 1849.

F. N. HARALSON. [SEAL.]

U. S. court, east. dist. of La.

UNITED STATES OF AMERICA,
Fifth circuit, and eastern district of Louisiana,
City of New Orleans, ss.

I, Francis N. Haralson, a commissioner duly appointed by the circuit court of the United States, for the fifth circuit, and eastern district of Louisiana, under and by virtue of the acts of Congress, entitled "an act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed Feb. 20, 1812, and the act of Congress entitled "an act in addition to an act entitled 'an act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,' " passed March 1, 1817; and the act entitled "an act to establish the judicial courts of the United States," passed September 24, 1789, do hereby certify, that the reason for taking the foregoing deposition is, that the witness lives in New Orleans, State of Louisiana, more than one hundred miles from Jackson, State of Mississippi, the place of trial of the cause for and in which said deposition is taken and is necessary.

I further certify, that no notices were by me made out and served on the respondent or adverse party, his agent or attorney, to be present at the taking of the deposition, and to put interrogatories, if he or they may think fit; and that no notices of the time and place of taking the said deposition were by me made out and served on said respondent or adverse party, because neither the said adverse party, nor any attorney or agent of said adverse party, was, at the time of taking said deposition, within (100) miles of the said city of New Orleans, the place of taking the said deposition, to the knowledge of the undersigned.

I further certify, that on this fifth day of May, A. D. 1849, I was attended by the witness, who being of sound mind and lawful age, and the witness having been by me carefully examined, and cautioned, and sworn to testify the whole truth, and the deposition having been by me reduced to writing in the presence of the witness, and after care-

fully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of sealing up, directing the same with my own hand, and forwarding to the court for which the same was taken.

I further certify, that I am not of counsel or attorney to either of the parties to the suit in said deposition and caption named, or in any wise interested in the event of the said civil cause named in the caption.

In testimony whereof I have hereunto set my hand and seal.

F. N. HARALSON, [SEAL.]
U. S. Commissioner, circuit and district court U. S., for the eastern district of Louisiana.

"*Copy of a letter of John Perkins to the parish judge of Concordia, Louisiana.*"

PARISH OF CONCORDIA,
State of Louisiana.

To the honorable Edward Broughton, esq., judge in and for the parish aforesaid.

June 8th, 1821.

DEAR SIR: Expecting to leave this [place] on Tuesday next for the Warm Springs in North Carolina, with the view of improving my present state of health, and not expecting to have it longer in my power to serve the parishioners of this parish as a justice of the peace than a few days, beg that this may be considered as my resignation of that office, &c., from and after the date hereof. That you will consider me under the provision of the law regulating the mode of acquiring residence, and renounce the same as no longer residing in the parish of Concordia, State of Louisiana, but residing in the county of Adams, Mississippi State.

The laws, books, and papers, &c., relating to the office which I have had the honor to hold for the last three years, I hold subject to your order.

Please place this on file in your office, under the provisions of the law in such cases made and provided, and you will,

Sir, oblige yours, respect[fully,] &c.,

JOHN PERKINS.

(Endorsed:) John Perkins, esq. To letter of resignation of the office of justice of the peace, parish judge of Concordia, Louisiana. June 8th, 1821. On file and considered of record.

The Hon. EDWARD BROUGHTON, esq.,
Concordia.

STATE OF LOUISIANA, *Parish of Concordia.*

Ninth district court.

I, Thomas Edwards, clerk of said court, do hereby certify the above

to be a true and correct copy of the original letter of resignation from John Perkins to Edward Broughton, on file and of record in the clerk's office of said court.

In testimony whereof I have hereunto set my hand and the seal of said court, this 8th day of May, A. D. 1849.

THOS. EDWARDS, *Clerk.*

THE STATE OF LOUISIANA,
Parish of Concordia.

I, Frederick H. Farrar, judge of the ninth judicial district court, of the parish of Concordia, State aforesaid, do hereby certify, that Thomas Edwards, whose genuine signature appears to the foregoing certificate and attestation, is and was, at the date hereof, clerk of said court, duly elected, qualified, and commissioned; that his said certificate and attestation are in due form of law; and that all of his acts in the premises are, and ought to be, entitled to full faith and credit.

Given under my hand and seal the eighth day of May, A. D. 1849.

FREDERICK H. FARRAR,
Judge ninth judicial district.

Also part of the answer of John Perkins in the case of J. G. Singleton vs. E. P. Forniquet et als., in the superior court of chancery, for the State of Mississippi, of which the following is a copy:

JOHN G. SINGLETON
vs.
E. P. FORNIQUET, John Perkins, John W. Thompson, William McAlpin, Ananias Pate, and Walter and Jane Strother. } No. 666.

In the superior court of chancery, State of Mississippi.

The separate answer of John Perkins to the bill of complaint, exhibited against him and others by John G. Singleton, in the court of chancery of the State of Mississippi.

This defendant, now and at all times, saving to himself all exceptions to complainant's said bill, in answer thereto, or so much thereof as he is advised is material for him to answer unto answers, and in answering says, that he admits, according to his information and belief, twenty thousand acres of land were granted by the British Government to Thaddeus Lyman, situated as mentioned in said bill of complaint, being the first and original grant of said tract of land to an individual, and known as Lyman's mandanus tract, and although said Thaddeus Lyman did not in his lifetime take the letters thereto out of the proper office, yet shortly after his death his son and heirs Lyman, did clear said letters out of the office, and thereby acquired, as this defendant believes, a valid and complete title to said land against the claims of all others, and sold four thousand acres of said mandanus tract, off the west half thereof, in tracts of one thousand acres each, to Peter Vair,

B. Livingston, Evans Jones, Elihu Hall Bay, and McCullough, as can be fully proven and shown whenever necessary; and this defendant purchased said tract of a thousand acres held by Elihu Hall Bay, and the tract of a thousand acres held by *by* said McCullough under said Lyman, which letters to said two tracts this defendant is willing and ready at any time to produce and submit to this honorable court, and which this defendant insists upon as a legal and equitable title in him and those claiming the same lands under him. With regard to the acts of the Spanish Government, or her governors, touching the land mentioned in complainant's bill, this defendant states the fact to be, to the best of his information and belief, that after the Spanish authorities took possession of this country, succeeding Great Britain, said authority confiscated the eastern half of said Lyman mandanus, and subsequently regranted it to different individuals, and west half said authorities of Spain had sold for the debts of said Lyman, as this defendant is informed and believes, and which he insists they had no right to do, especially as the tract had been sold to said Livingston, said Bay, said Jones, and said McCullough, as already stated; this defendant admits that said John Hartley, the elder, became the purchaser for about five hundred dollars, as defendant believes, of said ten thousand acres, being the western half of said Lyman's mandanus when so sold by the Spanish authorities as stated; but this defendant denies that said purchase could, in law or equity, as he is advised and verily believes, at all interfere with, affect, or in anywise supercede the titles conveyed by said Lyman to said Livingston, said Bay, said Jones, and McCullough, as aforesaid, and subsequently conveyed by said Bay as to the Bay and McCullough tract of one thousand acres each, as aforesaid, to this defendant, copies of which conveyances are hereto annexed, marked I, and prayed to be taken as part of this answer; this defendant admits that said John Hartley divided his said purchase into lots or tracts running across his purchase, being two of them in numbers, and each containing better than one thousand acres; and he admits that said John Hartley, the elder, partitioned off and conveyed or divided said lots among his children and widow, as stated in said bill of complaint; this defendant admits that the board of commissioners, under the authority of the United States, may have confirmed said John Hartley's title to him and those claiming under him, but he al leges that it could have no validity as to the rights of said Livingston, said Bay, and said Jones, and said McCullough, and so far as the confirmation of said Hartley's claim effected or covered the lands of said persons last mentioned, or the two tracts purchased by this defendant from said Bay, being said Bay's thousand acre tract, and the thousand acre tract of McCullough, sold by the said Bay as aforesaid, and which letters, thus derived from said Lyman, and originally from the British Government, had also been confirmed by said board of commissioners; this defendant admits that he purchased the undivided half of the tract or lot marked number 5 on the plat or chart accompanying complainant's bill, and marked exhibit B, from Sugar Turner, and that he derived it from Burns and

wife; and that this defendant conveyed to E. P. Forniquet all the lands he then held north of bayou Pierre, including a portion then unsold of the Bay and McCullough tracts, as well as also whatever this defendant might have in the Hartley claim; the deed by this defendant to said Lake, and by said Lake to John W. Thompson, designates the tracts sold under those deeds to be on the south side of the south branch of bayou Pierre, and to be part of the tract of land purchased by this defendant from Elihu Hall Bay as aforesaid, and under which purchase this defendant believes he had a perfect title to it, and under such a title sold and conveyed it as aforesaid to said Lake, afterwards conveyed to said Thompson; this defendant refers to the copy of his deed to W. R. McAlpin, annexed to complanants' bill as an exhibit, to show that with regard to the tract marked number five, of which he purchased the undivided half from Sugar Turner as aforesaid, except so far as covered by the paramount title conveyed by the McCullough tract, and acquired from said Bay, as already fully stated, to show that it was clearly understood between him and said McAlpin, that the one thousand acres conveyed to said McAlpin was to be taken off the northeast side of said tracts mentioned in said deed and that when said tract marked number five should be divided off between this defendant and those claiming under him, and the owner of the other half, that said McAlpin should have the northeast portion of that allotted to this defendant, or his donor or grantee, (as the case might be,) such portion as with the portion he was to have from the thousand acre tracts each would make to him his complement of one thousand acres, conveyed to him by his said deed; this defendant admits that the complainant first became purchaser of the dower interest of the widow in said lot or tract of land marked No. 5, exhibit B, to said bill, for, according to his recollection, the sum of seven hundred dollars, which dower was after this defendant purchased from said Turner, and that said widow, from whom he purchased, died soon after said purchase by said complainant, being in the same year, as this defendant believes; that this defendant admits that said complainants purchased from said Strother and wife, as stated in their deed to him, except so far as the same was not and is not covered by the title acquired by this defendant from Elihu Hall Bay as aforesaid, embracing the Bay and McCullough tracts as aforesaid; and also admits the sale to Daniel Vertner, at sheriff's sale, and admits that said Daniel Vertner may have reconveyed it, the property, back to said complainants, as said copy of a deed annexed to complainants' bill and an exhibit would show, and as this defendant has no knowledge of the originals of the deed by Strother and wife, and the sheriff of Claiborne county, and Vertner, this defendant requires the production of the originals and the proof of them; this defendant positively denies that said complainants cleared the land as stated in said bill, and erected the buildings and made the improvements thereon, with the approbation of this complainant, or of said Forniquet; on the contrary, said complainant first entered on the land and commenced clearing and improving the same under his purchase of said dower interest, as stated in said bill, but which terminated shortly after said purchase by the death of

said widow, and he continued to occupy and improve it, although notified by this defendant, as early as the year 1826 or 1827, that he would require complainant to payment for his undivided half, and for his use of it; and also notified him again in like manner in about 1828, and subsequently in about the year 1831 or 1832, instituted proceedings in the probate or orphan's court of Claiborne county, where the lands lie, for a division of said tract, but which were not prosecuted to a final determination, for causes over which this defendant himself had no control; this defendant admits that E. P. Forniquet applied for a division of such tract or lot number six, and the same was regularly divided under an order of the probate court of said county, by three impartial persons appointed as commissioners, and that the said Daniel Vertner, the then owner of the undivided portion claimed by complainants of said tract, attended while said division was making; that the same was done upon due notice and according to the statute in such cases made and provided; and this defendant insists upon the proceedings and decree of the probate or orphan's court of Claiborne county, as conclusive upon said complainants, and a complete bar to *his* said bill, and all relief therein sought in the same manner, as if the same was specially pleaded; for this defendant also avers, that to the best of his belief said Singleton, complainant, was also present when said division was made by said commissioners as aforesaid.

STATE OF MISSISSIPPI,
Adams county.

John Perkins, being duly sworn, says, that the matters and things set forth in his foregoing answer of his own knowledge are true, and those derived from the information of others he believes to be true.

JNO. PERKINS.

Sworn to and subscribed before me, this tenth day of March, A. D. 1837.

WM T. PURDUE.

STATE OF MISSISSIPPI.

I, Robert Hughes, clerk of the superior court of the court of chancery of the State aforesaid, do hereby certify, that the above and foregoing is a true, correct, and complete copy of the answer of John Perkins to the bill of complaint filed by John G. Singleton against E. P. Forniquet, John Perkins, John W. Thompson, Wm. McAlpin, Amanas Pate, and Walter and Jane Strother, as the same now remains on file and of record in my office.

In testimony whereof I have hereto subscribed my name, and caused the seal of said court to be hereto affixed, at the city of Jackson, this 14th day of November, A. D. 1848.

[L. S.]

ROBERT HUGHES, *Clerk*,
By E. P. RUSSELL, *D. C.*

"*Evidence offered by the defendant.*"

Deposition of Edward Broughton and Sarah Broughton.

THE STATE OF MISSOURI, *sct.*

Be it remembered, that on this sixteenth day of October, A. D. eighteen hundred and forty-eight, I, Robt. G. Watson, presiding justice of the county court of New Madrid county, in the State of Missouri, called and caused Edward Broughton and Sarah Broughton to be and personally appear before me, at my chambers, in the county of New Madrid aforesaid, in the State aforesaid, to testify, and the truth to say, in behalf of the defendant or respondent in a certain matter of controversy now depending and determined in the circuit court of the United States for the district of Mississippi, at Jackson, wherein E. P. Forniquet and wife are complainants, and John Perkins is defendant, upon the equity side of said court.

The said Edward Broughton being about the age of sixty-two years, and being first by me cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did first carefully examine the said Edward Broughton, and he thereupon deposed and said as follows:

"I knew both John Perkins and Mrs. Mary Bynum (a widow) intimately previous to their intermarriage; and previous to their intermarriage they both stated to me at different times their intention to remove their domicil to the State of Mississippi immediately after their marriage." And further this deponent saith not.

EDW'D BROUGHTON.

And the said Sarah Broughton, being about the age of fifty-seven years, and being first by me cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did secondly carefully examine the said Sarah Broughton, and she thereupon deposed and said as follows:

"I knew John Perkins and Mrs. (widow) Mary Bynum intimately previous to their marriage; and previous to their intermarriage they both stated to me their intention to remove their domicil to the State of Mississippi immediately after their marriage." And further this deponent saith not.

SARAH BROUGHTON.

And I, the said Robert G. Watson, presiding justice of the county court of New Madrid county, in the State of Missouri, do certify, that the depositions of the said Edward Broughton and Sarah Broughton were taken as aforesaid, because they, the said witnesses, live at the county of New Madrid, in the State of Missouri, a greater distance than one hundred miles from Jackson, the place of trial of the suit or matter of controversy aforesaid, and I caused no notification of the time and place of taking said depositions to made out and served upon E.

P. Forniquet and wife, the adverse party, or their counsel, to be present at the taking of said depositions, and to put interrogatories if they saw proper, because neither the said E. P. Forniquet and wife, (as I am informed,) nor their counsel, live within one hundred miles of the place of caption to these depositions, being the place where the same are taken. And I do further certify, that the depositions *was* taken down by me from the statement of the witnesses made in my presence by them, and signed by them in my presence, after being reduced to writing. And I do further certify, that I am not of counsel or attorney to either of the parties aforesaid, or interested in the result of the cause or controversy aforesaid.

In testimony whereof I have hereunto set my hand and seal the day and year first before mentioned.

ROBT. G. WATSON, [SEAL]
Presiding justice of the county court of New Madrid county, Missouri.

"*Deed from Harriet J. Bynum to Martin W. Ewing.*"

HARRIET JANE BYNUM to MARTIN W. EWING.

This indenture made on the 18th day of April, in the year of our Lord one thousand eight hundred and thirty-two, between Harriet Jane Bynum, of the county of Adams, in the State of Mississippi, one of the heirs and legal representatives of the estate of Benjamin Bynum, deceased, late of the parish of Concordia, State of Louisiana, of the first part, and Martin W. Ewing, of the county of Yazoo and State aforesaid, of the second part, witnesseth: That for and in consideration of the sum of fifteen hundred dollars current money, by the said party of the second part to the said party of the first part in hand paid at and before the sealing and delivering of these presents, the receipt of which she doth hereby acknowledge, and herself to be therewith fully satisfied, contented, and paid, the said party of the first part hath bargained and sold, delivered and enfeoffed, and by these presents doth give, grant, bargain and sell, deliver, enfeoff, release, convey, and confirm, unto the said party of the second part, his heirs and assigns, all the estate, right, title, claim, interest, and demand in and to a certain undivided tract of land, situated, lying, and being in the parish of Concordia, and State of Louisiana, on Lake Concordia, adjoining lands on one side of William Blunt, containing one thousand and forty acres, be the same more or less, which said undivided interest and claim amounts to one-fourth of the aforesaid described tract of land, together with all and singular the privileges and appurtenances thereto belonging, or in any wise appertaining, and all the estate, right, title, and interest, trust, property, claim, and demand whatsoever, at law and in equity, of her, the said party of the first part, of, in, and to the same.

To have and to hold the said herein described premises, with the

appurtenances thereunto belonging, unto the said party of the second part, his heirs and assigns, to the only proper use of the said party of the second part, his heirs and assigns, forever.

In testimony whereof the said parties have hereunto set their hands and affixed their seals, the day and year above written, one granting and the other at the same time accepting by these presents.

HARRIET J. BYNUM, [L. S.]
MARTIN W. EWING. [L. S.]

EDWARD SPARROW.
EDMUND P. POLLARD.

STATE OF LOUISIANA, *parish of Concordia.*

Before me, George S. Guion, judge of the said parish, personally came and appeared Dr. Edmund P. Pollard, of this parish, who, being duly sworn, declares and says, that he was present, and did see Harriet J. Bynum sign and seal the foregoing instrument of writing as and for her voluntary act and deed for the purposes therein mentioned, and that he (deponent) and Edward Sparrow signed their names thereto as witnesses in attestation thereof.

EDMUND P. POLLARD.

Sworn to and subscribed this 2d May, 1832. Recorded 2d May, 1832.

GEORGE S. GUION,
P. Judge.

Attest: GEORGE S. GUION,
P. judge.

STATE OF LOUISIANA, *parish of Concordia.*

I, A. C. Hunter, recorder in and for the parish aforesaid, do hereby certify, that the foregoing is a true copy of the original deed on file and of record in my office, in book F.

[L. S.] Given under my hand and seal of office, this 3d day of November, A. D. 1847.

A. C. HUNTER, *Recorder,*
By ISAAC JOHNSTON,
Governor of the State of Louisiana.

UNITED STATES OF AMERICA,
State of Louisiana.

These are to certify, that Alexander C. Hunter, whose name is subscribed to the instrument of writing herein annexed, is now, and was at the time of signing the same, recorder in and for the parish of Concordia, State of Louisiana, and that all his official acts as such are entitled to full faith and credit.

Given at New Orleans under my hand and the seal of the State, this ninth day of November, one thousand eight hundred and forty-seven, and of the independence of the United States [the] seventy-second.

[L. S.]

ISAAC JOHNSTON.

By the Governor:
CHARLES GAYARE, *Secretary of State.*

"*Deed from Martin W. Ewing and wife to Harriet J. Bynum et al.*"

This indenture, made this ninth day of April, in the year of our Lord one thousand eight hundred and thirty-two, between Martin W. Ewing and Ann S. Ewing, his wife, of the county of Yazoo, in the State of Mississippi, of the first part, and Harriet Jane Bynum, of the county of Adams, and State aforesaid, and Thomas P. Eskridge, of the county of Independence, in the Territory of Arkansas, of the second part, witnesseth: That for and in consideration of the sum of fifteen hundred dollars, current money, by the said parties of the second part to the said parties of the first part in hand paid at and before the sealing and delivering of these presents, the receipt of which they do hereby acknowledge, and themselves to be therewith fully satisfied, contented, and paid, the said parties of the first part have bargained and sold, aliened and enfeoffed, and by these presents do give, grant, bargain and sell, alien, enfeoff, release, convey, and *and* confirm, unto the said parties of the second part, their heirs and assigns, all the estate, claim, interest, and demand of, in, and to a certain undivided tract of land situated, lying, and being in Claiborne county, and State of Mississippi, containing nine hundred and twenty-four acres, be the same more or less, it being the well known plantation called "Long Branch," which was conveyed by John Perkins by deed bearing date the first day of May, in the year of our Lord one thousand eight hundred and twenty-nine, to Benjamin S. Bynum, deceased, late of said county of Claiborne; which said undivided interest and claim amounts to one-third of the aforesaid described tract of land, together with all and singular the privileges and appurtenances thereto belonging or in anywise appertaining, and all the estate, right, title, and interest, trust, property claim, and demand whatsoever, at law and in equity, of them the said parties of the first part of, in, and to the same; to have and to hold the said herein described premises, with the appurtenances thereunto belonging, unto the said parties of the second part, their heirs and assigns, to the only proper use of the said parties of the second part, their heirs and assigns, forever.

In testimony whereof the said parties have hereunto set their hands and affixed their the day and year above written.

MARTIN W. EWING, [SEAL.]
ANN EWING. [SEAL.]

STATE OF MISSISSIPPI,
Adams county, ss.

Personally appeared before me, Halsey Townsend, the presiding justice of the county court in and for said county, the above named Martin W. Ewing and Ann, his wife, and severally acknowledged that they signed, *seal*, and delivered the foregoing deed on the day and year therein mentioned, as their act and deed; and the said Ann, being by me examined separate and apart from her said husband, acknowledged that she signed, sealed, and delivered the same freely, without any fear, threat, or compulsion of her said husband.

Given under my hand and seal this 9th day of April, A. D. 1832.

HALSEY TOWNSEND, *P. J., &c.* [SEAL.]

STATE OF MISSISSIPPI,
Adams county.

I, Woodson Wren, clerk of the county court of said county, certify, that Halsey Townsend, esquire, whose name appears to the within certificate of acknowledgment, is this day the presiding justice of said court, duly commissioned and qualified.

[L. S] Given under my hand and official seal at the city of Natchez, this 9th day of April, A. D. 1832.

WOODSON WREN, *Clerk.*

Received for record April 16, 1832, and truly recorded.

WM. DAVIS, *Clerk.*

THE STATE OF MISSISSIPPI,
Claiborne county, ss.

I, Frederick J. Poor, clerk of the probate court in and for said county, do hereby certify, that the foregoing transcript contains a true copy of a deed from Martin W. Ewing and wife to Harriet Jane Bynum and Thomas P. Eskridge, as the same appears of record in my office.

[L. S.] Given under my hand and seal of office, at Port Gibson, this 16th day of November, A. D. 1847.

FRED. J. POOR, *Clerk.*

Deed from E. P. Fourniquet and wife to John Henderson.

Whereas John Henderson, formerly of Wilkinson, now of Hancock, county, in this State, had heretofore, by virtue of the authority granted to E. P. Fourniquet, of Natchez, by powers of attorney filed in the Planters and Commercial banks at Natchez, became the drawer and endorser of divers bills of exchange and promissory notes, executed to and for the exclusive use and benefit of the said Fourniquet, and negotiable in the two several banks aforesaid, and which are there yet remaining unpaid, to wit, in the Commercial Bank of Natchez the following bills of exchange, believed to be correctly described in the following table, viz:

	Drawer.	First endorser.	Second endorser.	Drawer.	Amounts.
5	E. P. Fourniquet -	John Henderson -	R. S. Throckmorton -	L. J. Fourniquet, N. O.	$5,128 74
48	Do. -	do. -	Chas. A. Lacoste -	do. do.	5,154 63
117	Do. -	do. -	do. -	do. do.	5,154 63
156	Do. -	Chas. A. Lacoste -	John Henderson -	do. do.	6,773 35
517	John Henderson -	E. P. Fourniquet -	C. A. Lacoste and F. Stanton -	do. do.	16,907 20
601	E. P. Fourniquet -	John Henderson -	F. Stanton -	do. do.	10,150 00
677	Do. -	do. -	C. A. Lacoste -	do. do.	8,802 60
	Do. -	T. G. Ellis -	John Henderson -	Thos. Biddle & Co., Philadelphia -	10,000 00
					$68,070 15

All of which are at this present [time] due and under protest; and in the Planters' Bank of the State of Mississippi, at Natchez, the following described promissory notes, viz:

Drawer.	First endorser.	Second endorser.	Amounts.
E. P. Fourniquet,	John Henderson,	F. Stanton -	$14,664 85
Do. -	Do. -	Do. -	3,000 00
Do. -	F. Stanton -	Jno. Henderson & L. J. Fourniquet,	8,301 20
Do. -	Do. -	–	1,673 00
Do. -	John Henderson,	–	2,782 40
Do. -	Do. -	–	600 00
			$31,021 45

All of which last mentioned notes are due and payable on the 3d of August, 1838; and whereas it is expected that said bills of exchange and promissory notes will be renewed and subject to certain curtails and terms to be stipulated for, will be continued by notes and liabilities to be hereafter executed in substitution for a number of years, during which it is contemplated that the name and responsibility of said Henderson, in a relation somewhat correspondent to that which it now bears on the before described bills and promissory notes, will be contained: Now, this indenture witnesseth, that in consideration of the premises above recited, and of one dollar to us, the said Edward P. Fourniquet and Harriet, his wife, in hand paid by the said Henderson, the receipt of which is hereby acknowledged, we grant, bargain, and sell, and by these presents have granted, bargained, and sold, remised, released, and forever quit claimed, to the said John Henderson, all our equal undivided half part of that certain plantation situated on the bayou Pierre, in the county of Claiborne, in this State, usually called "Long Branch," and bounded as follows, to wit: On the north by lands of William R. McAlpin, on the west by lands claimed by John G. Singleton and others, (and now in controversy at the suit of the said E. P. Fourniquet,) on the south by the bayou Pierre, and east by the lands of, being part of the "Lyman mandanus," and formerly owned by Benjamin S. Bynum, who obtained it from John Perkins, esq., and supposed to contain nine hundred and twenty-four acres, (more or less,) together with an undivided half of all the following named slaves in and belonging with the said plantation, viz., Judy, Juno, Lear, Celey, Hager, Armstead, Caroline, Harriet, Lucy, Yellow Betty, Leander, July, Hannah, Charity, Lydia, Andrew, Little George, Thornton, Edward, Caisey, Big Andrew, Richard, Eliza, Parker, Big Jim, Alick, Yellow Jack, Black Jack, Abraham, Peter, Big George, Little Simon, Little Jim, Charles, William, Moses,

Ephraim, Jacob, Billy, Robert, Henry, Sally, Rose, Edmund, Big Betty, Silvia, Maria, Rose, Davidson, Rachel, Little Betty, Tamar, Little Lucy, Fanny, Rose, Goodwin, Ellen, Catharine; above are cotton pickers. Children: Miles, Martha, Charles, Licia, French, Mary, Sarah, Keziah, Fagins, Harriet, Harry, Claiborne, Amey, and Betty, and the house servant Dinah, being in all seventy slaves, together with all the horses, mules, cattle, and stock of all kinds, and all wagons and farming utensils of whatever kind, with all the increase of said slaves and stock, and all the improvements and hereditaments and appurtenances of the said plantation. To have and to hold the said undivided moiety thereof, to him, the said Henderson, and to his heirs and assigns forever; in trust, however, and for the uses and purposes following, viz., to hold the same in full fee until all the said bills of exchange and promissory notes specified, and all those which may be executed in removal thereof successively, (and on which the said Henderson's name shall be continued,) shall be fully satisfied and discharged, or until said Henderson's responsibility on the said debts, as now existing, or as they, in succession, may hereafter exist, shall be released and discharged in any other manner; provided, also, that whenever said Henderson shall be compelled to pay, or otherwise to provide for said debt, or any part thereof, or when in his judgment and discretion he shall deem it prudent and necessary for his own protection so to do, he may, and is hereby fully empowered, to sell all or any part of such real and personal estate, either at public or private sale, and on such terms as he may prescribe, and the proceeds of such sale, after payment of costs and charges, duly appropriated to the discharge of any or all such debts, as aforesaid, as he may be liable for, and in such order and manner as he may deem best, he duly accounting for all such proceeds to the said E. P. Forniquet; provided, also, that in case the said Henderson should die before the object and purposes of this trust be fulfilled, then all the right, title, power, and interest, hereby vested in said Henderson, shall vest and enure to his executor or administrator, and unto his legal representatives, successively, till the purposes aforesaid be accomplished. And it is finally stipulated, that whenever the said Henderson, (or his estate, if he be dead,) shall be discharged and acquitted from all the liabilities aforesaid, as existing or hereafter to exist, that then the estate, real and personal, as above conveyed, which may be remaining unsold and unappropriated to the discharge of the debts aforesaid, shall, by the said Henderson, or his executor, or other legal representatives, be reconveyed and relinquished to the said Edward P. Forniquet, or his heirs, or to the said Harriet, if she shall be then surviving the said Edward.

In testimony whereof the said parties, both grantors and grantee, have hereunto set their hands and affixed their seals respectively, this sixteenth day of October, A. D. 1837.

E. P. FORNIQUET, [SEAL.]
H. J. FORNIQUET, [SEAL.]
JOHN HENDERSON. [SEAL.]

Witness present.

STATE OF MISSISSIPPI,
Hancock county, ss.

Personally appeared before me, John S. Brush, clerk of the circuit court of Hancock county, the above named John Henderson and Edward P. Forniquet, who acknowledged respectively that they each and severally signed, sealed, and delivered the foregoing instrument as their and each of their act and deed, and for the objects and purposes therein expressed. Also, at the same time and place appeared the said Harriet Forniquet, wife of the said Edward, who being first by me examined privately and apart from her said husband, acknowledged that she signed, sealed, and delivered the above and foregoing trust conveyance as her act and deed, and for the objects and purposes therein expressed, freely, and without any threats, fear, or compulsion of her said husband.

[L. S.] Given under my hand and seal of said county, this 18th day of October, A. D. 1837.

JOHN S. BRUSH, *Clerk.*

Received for record 23d February, A. D. 1839, and truly recorded.
JOHN WETHERELL, *Clk.*,
By ATER DAVIS, *Dy. Clk.*

THE STATE OF MISSISSIPPI,
County of Claiborne, ss.

I, Frederick J. Poor, clerk of the probate court in and for said county, do hereby certify, that the foregoing transcript of two pages and a part of this contains a true and correct copy of a deed of trust from E. P. Forniquet and wife to John Henderson, as the same appears of record, in book S, pages 236, '7, and '8, in my office.

Given under my hand and seal of office, at Port Gibson, this 30th day of November, A. D. 1848.

FRED. J. POOR, *Clk.*,
By J. W. W. MURPHY, *Dy. Clk.*

Deed of John Henderson and others to the Commercial Bank of Natchez.

Whereas Edward P. Forniquet and Harriet, his wife, of the county of Claiborne and State of Mississippi, did by deed bearing date the sixteenth day of October, A. D. 1837, and recorded in book S, pages 236, '7, and '8, of the records of deeds, in the clerk's office of the probate court of said county of Claiborne, convey to John Henderson, of the county of Hancock and State aforesaid, the one undivided moiety of the plantation of land, negro slaves, and other property herein after described, in trust, and with full power to the said Henderson, his executors and administrators, to sell and dispose of the same, and to apply the proceeds of the sale to the payment and discharge of any of the bills of exchange and notes mentioned in said deed, and upon which

said Henderson was endorser for said Forniquet; and whereas the Commercial Bank of Natchez is the holder and owner of the five following bills of exchange mentioned in said deed, to wit, one for five thousand one hundred and fifty-four $\frac{63}{100}$ dollars, endorsed by said Henderson and Ch. A. Lacoste; the second for the sum of six thousand seven hundred and seventy-three $\frac{35}{100}$ dollars, endorsed by Charles A. Lacoste and John Henderson; the third for the sum of ten thousand one hundred and fifty dollars, endorsed by John Henderson and Frederick Stanton; the fourth for eight thousand eight hundred and two $\frac{00}{100}$ dollars, endorsed by the said Henderson and C. A. Lacoste; and the fifth for the sum of ten thousand dollars, endorsed by Thos. G. Ellis and John Henderson; which five bills of exchange, with the interest and protest fees thereon, amount at the date of these presents to the sum of $50,845 58, after deducting $1,537 45 settled this day, due and owing to said Commercial Bank of Natchez as aforesaid.

And the said Commercial Bank of Natchez having agreed with the said John Henderson to purchase and receive the real and personal estate hereinafter described, in payment of the above described five several bills of exchange, in pursuance of said deed, and with the concurrence also of said Edward P. Fourniquet and his said wife—

Now, this conveyance witnesseth, that, for and in consideration of the premises, and of the said sum of fifty thousand eight hundred and forty-five $\frac{58}{100}$ dollars, paid to the said John Henderson and Edward P. Fourniquet and Harriet, his wife, by the cancelling of the above *of the above* described five several bills of exchange, and the discharge of said debt as aforesaid, which is herewith done, they, the said John Henderson, Edward P. Fourniquet and Harriet J. Fourniquet, his wife, have granted, bargained, sold, conveyed, and delivered, and do by these presents grant, bargain, sell, alien, convey, and deliver, unto the said Commercial Bank of Natchez, her successors and assigns, all their one equal undivided half part of that certain plantation of land situate on the bayou Pierre, in the said county of Claiborne, and State of Mississippi, and usually called "Long Branch," and bounded as follows, to wit, on the north by lands of William R. McAlpin, on the west by lands claimed by John G. Singleton and others, south by the said bayou Pierre, and east by other lands, and formerly owned by Benjamin S. Bynum, who obtained it from John Perkins, and being part of the Lyman mandamus, and supposed to contain nine hundred and twenty-four acres, more or less, being the same undivided half part of said plantation and tract of land conveyed by said Fourniquet and wife to said Henderson, by deed, as herein before recited; and also all the estate, right, title, and interest, of the said John Henderson, Edward P. Fourniquet and Harriet J., his wife, and each of them, in or to said tract and plantation of land, together with the appurtenances, and every part and parcel thereof; and also the undivided half part or moiety of the seventeen work oxen now on "Long Branch" plantation of land, of the eighteen horses, the stock of hogs, estimated at about eighty, of the one wagon and one ox cart, and of the other farming utensils, tools,

and implements, corn, fodder, and potatoes, upon said plantation and belonging to it; and also the following thirty-nine negro slaves for life, now upon said plantation, to wit:

Lydia, Eliza, and her children, Mary, Nance, and Margaret; Cary, Betsy, and her children, Catherine and Tre; George, Cooper, Andrew, Thornton, yellow Jack and his wife, Julia; Selina, and her children, Ary and Susan; Alick and his wife Lamor, and her child Frank; Simon, Jane, Rachel, and her children, Harry and a baby; Little Betsey, and her children, Claiborne and a girl; Jacob, Hagar, Parker and his wife, Betty; Hannibal, Jim and his wife, Rose; William, Mose Edwards, and his children, Charles, Myers, and Lucinda.

To have and to hold the above described and herein conveyed thirty-nine negro slaves, and said herein and hereby conveyed undivided moiety of the above described plantation and tract of land, and the undivided moiety of said oxen, horses, hogs, ox cart, ox wagon, farming utensils, implements, tools, corn, fodder, and potatoes, upon and belonging to said plantation, unto the said Commercial Bank of Natchez, her successors, and assigns, forever.

And the said John Henderson and Edward P. Fourniquet do jointly and severally covenant and agree, with the said Commercial Bank of Natchez, that they, the said Henderson and Fourniquet, and each of them, and each of their heirs, executors, and administrators, will warrant and for ever defend, unto the said Commercial Bank of Natchez, her successors, and assigns, the herein conveyed aforesaid moiety of said plantation and tract of land, with the appurtenances, against the claims and demands of all persons whatsoever, claiming or to claim the same, or any part thereof, legally or equitably; and will also warrant and defend the title to said negro slaves to said Commercial Bank of Natchez, her successors and assigns, against all persons whomsoever.

In testimony whereof the said John Henderson, and Edward P. Fourniquet and Harriet J., his wife, have hereunto set their hands and seals, this twenty-ninth day of October, A. D. eighteen hundred and forty.

JOHN HENDERSON, [L. S.]
E. P. FOURNIQUET, [L. S.]
H. J. FOURNIQUET. [L. S.]

THE STATE OF MISSISSIPPI,
Adams county, sct.

Personally appeared before me, Ralph North, clerk of the probate court of said county, the foregoing named John Henderson, who acknowledged that he signed, sealed, and delivered the foregoing deed to the Commercial Bank of Natchez, on the day and year therein named, as his own act and deed.

Given under my hand, and the seal of said court, the 29th day of October, A. D. 1840.

[L. S.]

RAL. NORTH, *Clerk.*

THE STATE OF LOUISIANA,
City of New Orleans.

Before me, Francis X. Martin, one of the judges of the supreme court of [the] State of Louisiana, at the city of New Orleans, personally came Mrs. Harriet J. Fourniquet, wife of Edward P. Fourniquet, and whose signature is affixed to the foregoing instrument of conveyance, and when the said Harriet, being first examined by me separately and apart from her husband, acknowledged that she signed, sealed, and delivered the said instrument of conveyance as her act and deed, on the day and year therein mentioned, and for the object and purposes therein expressed, freely, and without any fear, threats, or compulsion of her said husband.

Given under my hand and seal, at the said city of New Orleans, this fifth day of November, A. D. 1840.

F. X. MARTIN, *J. S. C.* [L. S.]

THE STATE OF MISSISSIPPI, *Adams county.*

Personally appeared before me, Ralph North, clerk of the probate court of said county, the foregoing named E. P. Fourniquet, who acknowledged that he signed, sealed, and delivered the foregoing deed to the Commercial Bank of Natchez, on this 23d day of November, 1840, as his own act and deed.

Given under my hand, and the seal of said court, the 23d November, A. D. 1840.

[L. S.]

RAL. NORTH, *Clerk.*

Received for record 26th November, 1840, and truly recorded.

FRED. J. POOR, *Clerk.*

THE STATE OF MISSISSIPPI,
County of Claiborne, ss.

I, Frederick J. Poor, clerk of the probate court in and for said county, do hereby certify, that the foregoing transcript of two pages and part of this contains a true and correct copy of a deed from John Henderson and others, to the Commercial Bank of Natchez, as the same appears of record in my office in book U, pages 381, '2 and '3.

Given under my hand and seal of office, at Port Gibson, this 30th day of November, A. D. 1848.

[L. S.]

FRED. J. POOR, *Clerk,*
By J. W. W. MURPHY, *D. C.*

Abstract of judgment in the case of R. B. Jones against E. P. Forniquet.

STATE OF MISSISSIPPI,
Claiborne county.

Pleas before the honorable Stanhope Poesy, judge of the first judi-

cial [district] of said State, at a circuit court began and holden at the court-house in and for the said county, on the 1st Monday and 5th day of October, A. D. eighteen hundred and forty-six. Be it remembered, that on the 16th day of October, at the term of our court aforesaid, the following proceedings were had:

REUBEN B. JONES
vs.
MARY B. ESKRIDGE and Edward P. Forniquet.

This day came the plaintiff, by his attorney, and dismisses the suit as to the defendant, Eskridge; therefore let all process cease as to her; and the defendant, Forniquet, failing to appear and plead answer or demur to this action, it is considered by the court that the plaintiff recover of the said defendant, Forniquet, damages; but as the court knows not what those damages are, ordered that a jury come to assess the same. Whereupon came the following jury, to wit, John D. Cooper, John Brown, John Crow, Thomas Park, Noel Wells, R. M. Harrison, J. G. Martin, J. H. Tanner, John Miller, Chas. Ingram, E. H. Dorsey, R. Hudson; and the jurors aforesaid being elected, tried, and sworn, well and truly to assess damages herein, on their oaths say: "We, the jury, find for the plaintiff and assess damages at $506 55." Therefore, it is considered by the court that the plaintiff recover of the said defendant, Forniquet, the sum of five hundred and six dollars and fifty-five cents, the amount the jury above found and assessed, with interest at the rate of six per centum per annum, from this date, and costs of suit, and may have execution, &c. Whereupon on the 5th day of November, 1846, the clerk of our court aforesaid issued a writ of fieri facias directed to the sheriff of Claiborne county, which with the endorsements and return thereon is in the words and figures following, to wit:

Judgment was rendered in this case vs. Eskridge, 16th December, 1842, taken to high court of errors and appeals, and revised January term, 1844.

The State of Mississippi, to the sheriff of Claiborne county, greeting:

We command you that of the goods and chattels, lands and tenements, of Edward P. Forniquet, late of your county, you cause to be made the sum of five hundred and six dollars and fifty-five cents, which Reuben B. Jones, lately in our circuit court of said county, hath recovered against him for his damages, which he has sustained by reason of the non-performance of a certain promise and assumption by the said Forniquet to the said Jones lately made, with interest on the said sum at 6 per centum per annum, from the 16th day of October, one thousand eight hundred and forty-six, until paid; also the sum of thirty-nine 12½ dollars for his costs by him about his suit in that behalf expended. Whereof the said Edward P. Forniquet is convicted, as appears to us of record, and that you have said moneys before the

judge of our said court, on the first Monday of April next, to render the said Jones for his damages and costs aforesaid, and have you there this writ.

Witness the honorable Stanhope Posey, judge of the first judicial district of said State, the first Monday of October, one thou-
[SEAL.] sand eight hundred and forty-six, and seal of said office. Issued the 5th day of November, 1846.

DAN. McDOUGALL, *Clerk.*

Received 18th November, 1846.

R. M. MOORE, *Sheriff.*

By virtue of the within execution, I have this day, the twentieth day of November, A. D. 1846, levied on the following described property as the property of the defendant, Edw'd P. Forniquet, to wit: A certain piece or parcel of land lying and being in the county of Claiborne, and State of Mississippi, in what is usually called the Lyman mandamus, being the undivided interest purchased by John Perkins, of a certain John Bunns and wife, in and to a certain tract of one thousand acres originally belonging to John Hartley, jun., deceased, adjoining lands of the late B. S. Bynum, deceased, and conveyed to said Edward P. Forniquet by said John Perkins and wife, by deed dated December 25th, A. D. 1833, and recorded in the office of the clerk of the probate court of Claiborne county, in book N, pages 526, 527, 528. Levied on as the property of said Forniquet, and will be sold to satisfy plaintiff's debt and all costs.

R. M. MOORE,
Sheriff of Claiborne county.

The lands described in the within levy, was, after due and legal notice of time and place of sale having first been given, sold at the court-house door in Port Gibson, on Monday, the fourth day of January, A. D. 1847, when and where Mary B. Eskridge became the highest and final bidder, purchased the entire interest conveyed to said Edward P. Forniquet, by John Perkins and wife, at the price of five hundred and sixty dollars and eighty-six and one-half cents, which amount exactly satisfied the plaintiff's money, interest, and all costs of the execution to which this return is attacthed, Jan. 4th, 1847.

R. M. MOORE, *Sheriff.*

Received plaintiff's money in full - - - $513 20

H. T. ELLET, *Att'y and assignee.*

Costs satisfied in full, $41 66, March 24, 1847.

R. M. MOORE, *Sheriff.*

REUBEN B. JONES
vs.
MARY B. ESKRIDGE & E. P. FORNIQUET.

Claiborne circuit court.

For value received I assign to H. T. Ellet all my interest in the above suit, and all moneys that may at any time be collected thereon.

R. B. JONES.

May 2, 1845.

THE STATE OF MISSISSIPPI,
Claiborne county, ss.

I, Daniel McDougall, clerk of the circuit court in and for said State and county, do hereby certify, that the foregoing three pages and this page contain a true copy of the judgment and the writ of fieri facias which issued upon the same, in the case of E. B. Jones vs. R. P. Forniquet, together with the sheriff, and all endorsements on said execution.

[L. S.] Given under my hand and seal of office this 15th day of November, A. D. 1847.

DAN. McDOUGALL, *Clerk.*

Transcript of deed from R. B. Moore, sheriff, to M. B. Eskridge.

This indenture, made and entered into this the 4th day of January, in the year of our Lord eighteen hundred and forty-seven, between Richard M. Moore, sheriff of the county of Claiborne and State of Mississippi, of the one part, and Mary B. Eskridge of the other part, witnesseth: That whereas by virtue of the following execution, issued out of the circuit court of Claiborne county, to the said sheriff directed and delivered, to wit, a writ of fieri facias in favor of Reuben B. Jones against Edward P. Forniquet, for the sum of five hundred and six dollars and fifty-five cents, with interest, from the sixteenth day of October, one thousand eight hundred and forty-six, until paid, at the rate of six per cent. per annum; also the sum of thirty-nine dollars and twelve and one-half cents, costs, issued on the fifth day of November, A. D. 1846, by which said writs of fieri facias, above described, the said sheriff was commanded to make of the goods and chattels, lands and tenements, of the above named defendant, the said sum of money in said execution specified; and whereas, after the coming of said execution, to wit, on the 20th day of November, 1846, the said sheriff did levy the same on all the right, title, claim, and interest of the defendant, Edward P. Forniquet, in and to the following described tract, piece, or parcel of land, to wit, a certain piece or parcel of land lying and being in the county of Claiborne, and State of Mississippi, in what is usually called the Lyman mandamus, being the undivided interest purchased by John Perkins of a certain John Burns and wife, in and to a certain tract of one thousand acres, originally belonging to John Huntley, jr., deceased, adjoining lands of the late B. S. Bynum, deceased, and conveyed to said Edward P. Forniquet by said John Perkins and wife, by deed

dated December 25th, 1833, and recorded in office of the clerk of the probate court of Claiborne county, in book N, pages 526, 527, 528.

And whereas the said Richard M. Moore, as sheriff of the county of Claiborne, and by virtue of said writ of fieri facias, and the said levy by him made as aforesaid, and after notice duly advertised, by posting up notices at five different places in said county of Claiborne, did, on the 4th day of January, in the year of our Lord one thousand eight hundred and forty-seven, at the court-house door in said town of Port Gibson, proceed to sell the said tract, piece, or parcel of land at public vendue to the highest bidder for cash, when and where the said Mary B. Eskridge, being the highest and last bidder, became the purchaser at the price of five hundred and sixty dollars and eighty-six and one-half cents. Now, this indenture witnesseth, that the said Richard M. Moore, sheriff, as aforesaid, in consideration of the premises, and of the said sum of five hundred and $\frac{86}{100}$ dollars to him in hand paid by the said Mary B. Eskridge, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, conveyed, and confirmed, and by these presents do grant, bargain, sell, convey, and confirm, unto the said Mary B. Eskridge, her heirs and assigns, all the right, title, claim, interest, and estate that the said Edward P. Forniquet has of, in, and to, the above described tract, piece, or parcel of land, or ground, (or had thereto at the time of the rendition of the judgment on which the above described execution have been issued,) to said Mary B. Eskridge, her heirs, and to have and to hold the above described tract, piece, or parcel of land, so as aforesaid taken and sold by virtue of the execution aforesaid, unto her, the said Mary B. Eskridge, her heirs and assigns forever.

In testimony whereof I hereunto set my hand and affix my seal, in my official capacity, this the day and date above written.

RICHARD M. MOORE. [SEAL.]
Sheriff of Claiborne county.

The words "Martin O. Hopkins" being first erased in three places, and "Richard M. Moore" interlined.

Attest: H. T. ELLETT.

THE STATE OF MISSISSIPPI,
County of Claiborne, ss.

Personally appeared before the undersigned, clerk of the probate court, in and for said county, the within named Richard M. Moore, sheriff of Claiborne county aforesaid, who acknowledged that he signed, sealed, and delivered the within deed, (in his official capacity,) on the day and year therein written, as his act and deed.

Given under my hand and seal of office at Port Gibson, this
[L. S.] 24th day of March, A. D. 1847.

FRED. J. POOR, *Clerk.*

Received for record 15th November, 1847, and truly recorded.
FRED. J. POOR, *Clerk.*

THE STATE OF MISSISSIPPI,
County of Claiborne, ss.

I, Frederick J. Poor, clerk of the probate court in and for said county, do hereby certify, that the foregoing transcript contains a true copy of a deed from Richard M. Moore, sheriff of said county of Claiborne, to Mary B. Eskridge, as the same appears of record in my office.

[L. S.] Given under my hand and seal of office, at Port Gibson, this 16th day of November, A. D. 1847.

FRED. J. POOR, *Clerk.*

Deed from John Perkins to Benj'n S. Bynum.

This indenture, made and entered into this first day of May, in the year of our Lord one thousand eight hundred and twenty-nine, between John Perkins, of the county of Adams and State of Mississippi, of the one part, and Benjamin S. Bynum, of the county of Claiborne, State aforesaid, step-son to me, the said John Perkins, of the second part, witnesseth: That the said party of the first part, for and in consideration of the natural love and affection which he hath for the said party of the second part, and other good and sufficient causes and considerations him hereunto moving, hath given, granted, aliened, released, and confirmed, and by these presents doth give, grant, alien, release, and confirm, unto the said party of the second part, his heirs and assigns, all that plantation called "Long Branch," being that tract or parcel of land situate in the county of Claiborne and State of Mississippi, on the bayou Pierre, and bounded as follows, to wit: On the north by lands of William R. McAlpin; on the west by lands owned by John G. Singleton, and the said party of the first part; on the south by the bayou Pierre, and on the east by lands unknown, being part of the lower half of Lyman's mandamus, and purchased by the said party of the first part from John Patterson and wife and Richard Grimes and wife, and more particularly described in a survey made by William Davis, dated February 23d, 1829, and hereunto annexed, containing, by estimation, nine hundred and twenty-four acres, be the same more or less; to have and to hold the above described tract and parcel of land, together with all and singular the privileges and appurtenances thereunto belonging, unto the said party of the second part, his heirs and assigns, to the only proper use and behoof of him and them forever; provided, always, notwithstanding, nevertheless, and upon the following conditions, to wit, that in case the said party of the second part shall die without lawful issue, this deed shall operate as a conveyance of the premises herein described to Mary C. Bynum and Harriet J. Bynum, sisters of the said Benjamin S. Bynum, and their children, to the exclusion of all others; and if the [said] Mary and Harriet shall also die without issue, then to John and William Perkins, the sons of the said party of the first part. And provided,

also, if the said party of the second part, from any misapprehensions, or with any view whatever, shall be induced to prefer any claim against the party of the first part, for any matter or thing whatever up to or previous to this time, then this deed shall be void. And it is further understood and provided, that if the said party of the second part wishes to sell or dispose of the said tract of land, he shall have full power and authority to do so, provided he vests the purchase money in other real estate, subject to the foregoing conditions and proviso. And the said party of the first part, for himself, his heirs, &c., the said tract of land and premises, with the appurtenances thereunto belonging, unto the said party of the second part, his heirs and assigns, (subject to the foregoing conditions, limitations, and provisoes,) against himself and all persons claiming by, through, or under him, will warrant and forever defend, but against the claim or claims of no other persons whatever.

In testimony whereof the said John Perkins hereto sets his hand and affixed his seal, the day and year first above written.

JOHN PERKINS. [SEAL.]

In the presence of—
JOSEPH SMITH,
JAMES NOALEN.

[For map, see original, page 69.]

THE STATE OF MISSISSIPPI,
Claiborne county, ss.

I, William Davis, county surveyor of the county aforesaid, do certify, that I have surveyed for John Perkins, esq., the Lyman mandamus, a tract of land containing nine hundred and twenty-four superficial acres, which survey the foregoing plat truly represents.

Given under my hand, at Port Gibson, this 23d day of February, A. D. 1829.

WM. DAVIS, *Co. Surveyor.*

STATE OF MISSISSIPPI,
Adams county.

John Perkins personally appeared before the undersigned, justice of the peace in and for said county, and acknowledged that he signed, sealed, and delivered the annexed instrument for the purpose therein mentioned.

Witness my hand and seal, this 28th of May, 1829.

JAMES CARSON. [L. S.]

Received for record June 8th, 1829, and truly recorded.

N. M. DAVIS, *Clerk.*

STATE OF MISSISSIPPI,
Claiborne county.

I, John Wetherall, clerk of the probate court in and for said county, do hereby certify, that the foregoing transcript contains a true copy of the deed from John Perkins to B. S. Bynum, as the same appeared of record in my office. Recorded in book K, pages 444, 445, 446, and 447.

Given under my hand and seal of office, this the 14th [L. S.] day of January, A. D. 1839.

JNO. WETHERELL, *Cl'k.*
By J. L. WESTON, *D'y Cl'k.*

Release from E. P. Fourniquet et ux. to John Perkins.

Received, Natchez, May 27th, 1834, of John Perkins, on settlement of all accounts, debts, dues, and demands whatever, up to the present day, one hundred dollars in full, having, on a previous occasion, received from him as the guardian of my wife, Mrs. Harriet J. Fourniquet, late Miss Bynum, all the estate, portion, and share which she inherited by the death of her late father, Benjamin Bynum, late of Concordia, Louisiana, deceased, or her mother, Mrs. Mary Perkins, of the county of Adams, and State of Mississippi, and brother, Benjamin S. Bynum, of the county of Claiborne, and State last aforesaid, deceased; and do by these presents, jointly with my said wife, release and for ever discharge the said Perkins from all and every claim which she, or either of us, might or could have against him, the said Perkins, either as guardian or otherwise, growing out of the estates aforesaid, or in any other matter and shape whatsoever, and forever exonerate him by these presents, his heirs and executors and administrators, therefrom.

[In] witness whereof we have hereunto set our hands and seals, the day and year first above written, to wit, in the year of our Lord one thousand eight hundred and thirty-four, in the presence of Elijah Bell and John E. Maddix, whose names are hereunto subscribed as witnesses hereunto; the said John Perkins being also personally present, and by these presents accepting.

E. P. FOURNIQUET, [SEAL.]
HARRIET J. FOURNIQUET, [SEAL.]
JOHN PERKINS. [SEAL.]

Witnessed, signed, sealed, and delivered, in the presence of—
ELIJAH BELL.
JOHN E. MADDUX.

STATE OF MISSISSIPPI,
Adams county.

Personally appeared before me, Woodson Wren, a justice of the peace for the county of Adams aforesaid, E. *T.* Fourniquet and Har-

riet J. Fourniquet, his wife, and John Perkins, whose names are subscribed to the foregoing instrument, and acknowledged that they signed, sealed, and delivered the same as their act and deed, on the day, and for the uses and purposes therein mentioned.

Given under my hand and seal, this 28th May, 1834.

WOODSON WREN, *J. P.* [SEAL.]

STATE OF MISSISSIPPI,
Adams county.

I, Fleming Wood, clerk of the probate court for the county aforesaid, do hereby certify, that Woodson Wren, whose proper signature is subscribed to the above acknowledgment, is, and was at the time of his subscribing the same, a justice of the peace in and for said county, duly elected, commissioned, and qualified as such, and that all his acts are, as justice of the peace, *are* entitled to full faith and credit.

Witness my hand and official seal, this 28th day of May,
[L. S.] 1834.

F. WOOD, *Clerk.*

THE STATE OF MISSISSIPPI,
Claiborne county.

I, Lucas Gee, clerk of the probate court in and for the county and State aforesaid, do hereby certify the within release from E. *F.* Fourniquet and wife to John Perkins *are* truly recorded in my office in book No. 13, pages 566, 567.

Given under my hand at the town of Port Gibson, this 31st day of May, 1834.

LUCAS GEE, *Clerk,*
By WM. GEE BENAM, *D'y Clerk.*

STATE OF LOUISIANA,
Parish of Concordia, ss.

I, George W. Keeton, judge of the said parish, duly commissioned and qualified, do hereby certify and attest, unto all whom it doth or may concern, that Harriet J. Bynum, wife of Edward P. Fourniquet, and Edward P. Fourniquet and John Perkins, personally appeared before me, and acknowledged that they signed and sealed the foregoing instrument of writing, as and for their proper act and deed. To the due execution thereof, an act being requested, the same under my seal of office, to serve and as occasion may require.

Done and passed at my office, in the town of Vidalia, this
[L. S.] thirtieth day of January, A. D. eighteen hundred and thirty-seven.

G. W. KEETON,
P. Judge.

STATE OF LOUISIANA,
Parish of Concordia, ss.

I certify *that* the within instrument of writing to be duly recorded in my office in book "H," at pages 21 and 22.

In testimony whereof I have hereunto set my hand, and [L. S.] the seal of my office, at Vidalia, this 30th January, A. D. 1837.

G. W. KEETON,
P. Judge.

"Release from M. W. Ewing to John Perkins."

Received of John Perkins two negro slaves, Lewis and Anderson, also his draft on A. Fisk, for four hundred and seventy $\frac{84}{100}$ dollars, at one hundred and twenty days, endorsed by R. M. Gaines; which, when paid, will be in full of all claims and demands of every kind and description, which we, or either of us, may have against said Perkins, individually, or against him as curator of the estates of Benjamin Bynum and Mary Perkins, in the parish of Concordia, State of Louisiana, or as executor of the will of the said Mary Perkins, dated March 30, 1822, and in full of all claims of every kind, which we, or either of us, may have against said Perkins, in any way whatever; we having received from said Perkins, heretofore, the following named slaves, to wit, Judah Myers, aged about 25 years; Edward, about 4 years; Harry, about 7 months; little Daniel, about 16 years; Patrick, 13 years; Lewis, 5 years; big Daniel, 50 years; big Sarah Miambo, about 50 years; Ned, 16 years; Polly, 14 years; Frank, about 50 years; Mariah, his wife, 37 years old; Frank, aged about one year; Fanny, about seven; Samuel, about 19 years. Also two mules, 30 head of cattle, and a chest of tools; and the said Perkins accepts hereof, as a full satisfaction and discharge from the said Martin W. Ewing and Anne, his wife, in the premises.

Witness our hands, this 11th day of April, A. D. 1828.

MARTIN W. EWING,
ANNE EWING,
JOHN PERKINS.

Att. R. M. GAINES.

STATE OF LOUISIANA, *parish of Concordia, ss.*

Before me, the undersigned judge in and for the parish aforesaid, personally appeared the undersigned R. M. Gaines, of Adams county, in the State of Mississippi, and being duly sworn, deposes and says, that he was present and saw the above named parties execute the foregoing instrument of writing, as and for their respective acts, delivered for the purpose therein mentioned.

R. M. GAINES.

Sworn to and subscribed, this 12th day of April, 1828, before me
ROBERT OGDEN, *Judge.*

1502.

United States circuit court.

FOURNIQUET and Wife
vs.
JOHN PERKINS.

Received of Mr. Ogden, three $\frac{75}{100}$ dollars, for copying two acts of release, marked G and H; said copies to remain in file in this office, in lieu of the originals, withdrawn by him.

New Orleans, 1st July, 1848.

ED. RANDOLPH, *Clerk*,
By WILLIAM AUDRY, *D. C.*

Paid Mr. Ogden, by J. P., on the same day.

STATE OF LOUISIANA, *parish of Concordia, ss.*

Recorded in book E, page 183.

[L. S.] In testimony whereof I have hereunto set my hand, and the seal of my office, this 12th day of April, 1828.

ROBERT OGDEN, *Parish judge, &c.*

"*Deed from John Perkins to E. P. Fourniquet et ux., dated 25th December*, 1833."

Know all men, by these presents, that I, John Perkins, of the county of Adams and State of Mississippi, now of the parish of Concordia, Louisiana, for and in consideration of the love and regard I have for my step-daughter, Mrs. Harriet J. Fourniquet, late Harriet J. Bynum, as well for the further consideration of the sum of one dollar, to me in hand paid, by Mr. Edward P. Fourniquet, the husband of my said step-daughter, the receipt whereof I do hereby acknowledge, have demised, released, and by these presents, for myself and my heirs, do remise and release, and forever quit claim, unto the said Edward P. Fourniquet, his heirs and assigns, forever, all the right, title, interest, property, estate and demand, which I, the said John Perkins, have in and to a certain piece or parcel of land, lying and being in the county of Claiborne and State of Mississippi, in what is usually called Lyman's mandamus, being a part of the undivided interest purchased by the said John Perkins of a certain John Burn and his wife, late Hartley, which they had in and to a certain tract of one thousand acres, originally belonging to John Hartley, jr., deceased, adjoining lands of the late B. S. Bynum, deceased; to have and to hold the said premises, with all the privileges and appurtenances, unto him, the said Edward P. Fourniquet, his heirs and assigns, forever; so that neither I, the said John Perkins, nor any other person or persons in my name or behalf, shall or will hereafter claim or demand any rights or titles to the premises aforesaid, or any part thereof; but they, and every of them, shall by these presents be excluded and forever barred; and Mrs. Zilphia Perkins, wife of the said Perkins, in her own right, by these

presents, hereby relinquishes all her right, title, interest, claim and demand whatever.

In witness whereof they have hereunto set their hands and seals, this twenty-fifth day of December, in the year of our Lord one thousand eight hundred and thirty-three.

JOHN PERKINS, [SEAL,]
Z. PERKINS. [SEAL.]

Acknowledged in the presence of ———.

STATE OF MISSISSIPPI, *Adams county.*

Personally appeared before me, William B. Melvin, a justice of the peace in and for said county, the above named Zilpha Perkins, wife of the above named John Perkins, who, being examined separate and apart from her husband, acknowledged that she signed, sealed, and delivered the foregoing deed of gift, on the day and year above mentioned, as her voluntary act and deed, without any fear, threat, or compulsion of her husband, whereby she relinquishes her rights and title to the premises herein mentioned.

Given under my hand and seal, at the city of Natchez, this 24th day of March, A. D. 1834.

WILLIAM B. MELVIN, [SEAL,]
Justice peace.

STATE OF MISSISSIPPI, *Claiborne county.*

John Perkins, whose name is subscribed to the within deed of gift, came personally before the undersigned justice of the peace, in and for said county, and acknowledged that he signed, sealed, and delivered the within deed of gift on the day therein mentioned, and for the purposes expressed, as his voluntary act and deed.

Given under my hand and seal this 17th day of May, A. D. 1844.

JAMES H. MAURY, *J. P.* [SEAL.]

Received for record 17th May, A. D. 1834, and truly recorded.

LUCAS GEE, *Clerk.*

THE STATE OF MISSISSIPPI,
County of Claiborne, ss.

I, Frederick J. Poor, clerk of the probate court in and for said county, do hereby certify, that the foregoing transcript contains a true and correct copy of a deed of gift from John Perkins and wife [to] Mrs. Harriet J. Fourniquet, as the same appears of record in my office.

Given under my hand and seal of office, at Port Gibson, this 26th day of October, A. D. 1847.

[L. S.] FRED. J. POOR, *Clerk,*
By JNO. W. MURPHY, *D'y Clerk.*

Agreement of counsel.

E. P. FORNIQUET et ux., M. W. Ewing et ux.,
vs.
JOHN PERKINS. } No. 158.

In the circuit court of Mississippi. United States, southern district [of] Mississippi. November term, 1848.

We, the solicitors on both sides, agree—

1st. That this cause be set for hearing at the next May term, as if so ordered at rules.

2d. That commissions remain open, either party naming his commissioner without proper order and taking out commission, giving to the other party usual notice to file cross interrogatories.

3d. That the deposition of Broughton and wife, taken by mistake in No. 159, be read in evidence in this case as if duly taken.

4th. That the answer of John Perkins, with exhibits, being a copy of his answer filed in the circuit court of the United States in Louisiana, and plea of evidence in No. 159, may be used as evidence in this case, [if] the complainant chose to do so.

H. S. EUSTES, *Sol. for def't,*
JOHN HENDERSON, *Sol. for comp'ts.*

Order at May term, A. D. 1849.

And afterwards, to wit, on the 18th day of May, in the year of our Lord one thousand eight hundred and forty-nine, the following order was entered in said cause:

Cause argued and submitted on final hearing.

Copy of interlocutory decree.

E. P. FOURNIQUET and Harriet J. Fourniquet, his wife, and M. W. Ewing and Ann S. Ewing, his wife,
vs.
JOHN PERKINS. } 158.

Circuit court, United States, for the southern district of Mississippi. May term, 1849. In chancery.

And now, at this term, the above entitled cause came on for final hearing before the honorable Samuel J. Gholson, judge of the United States district court for the State of Mississippi, and ex officio holding pleas in the said circuit court of the United States, for the southern district of said State, and in this case sitting as chancellor.

And the said cause having been fully argued on both sides, and the court, the said Samuel J. Gholson presiding as aforesaid, being now sufficiently advised in the premises, doth order, adjudge, and decree:

That a partnership of acquets and gains, known as the marital community, did exist in the State of Louisiana between the defendant

herein and his former wife, the mo her of the complainants, Ann S. and Harriet J., beginning 12th August, 1818, and terminating by death of defendant's said wife on 12th of August, 1824. That the productive resources of said community were wholly situated in said State of Louisiana, and that during the subsistence of said partnership the defendant as head of the community, did invest from the community funds and acquets accruing in the State of Louisiana large sums of money in the purchase of real estate and the improvement thereof in the State of Mississippi, and obtained titles therefor in his own name. And which real estate was so held by him at the dissolution of the community on the 12th August, 1824, and a great part of which has been sold by him since that date.

It is therefore referred to William H. Browne, a master in chancery, to take and state an account against said defendant for all the several sums of money so invested by said defendant in the purchase of lands, and for permanent improvements thereon, in the State of Mississippi, during the continuance of the partnership between the spouses, from 12th August, 1818, to 12th August, 1824, and to the extent which said property was subsisting and held in right of said purchases at the dissolution of the community on the 12th August, 1824.

2d. That said master doth ascertain and report at what time or times, and at what prices, the said defendant sold said real estate since the dissolution of the community, and how much of the same he still retains in his own name.

3d. That the master, in stating said account against said defendant, shall charge defendant with the aggregate amount of said investments as of date 13th August, 1824, and on the half part of said sum, and from that date will compute the interest at the rate of 8 per centum per annum up to the time of coming on of said report.

4th. That from the gross amount so resulting as last aforesaid, the master shall state and show the proportionate amount which two sevenths and two thirds of one seventh will produce, as being the amount and proportion which complainants claim.

5th. That said master will take such further testimony in the cause as may be necessary to the completion of this account, according to this decree, and report the same in writing; and that in all things he govern himself by the rules prescribed in like cases of account.

And of his actings and doings in the premises make due report to this court with all convenient speed.

It is further ordered, that all other matters involved in this suit, and not herein adjudged, be reserved for final decree after the coming in of the report hereby directed.

(Signed) S. J. GHOLSON.

May the 22d, A. D. 1849.

Agreement of counsel.

E. P. FOURNIQUET et ux., and
M. W. EWING et ux.,
vs.
JOHN PERKINS.

In circuit court, U. S., at Jackson, Mississippi, May term, A. D. 1849.
In equity and at hearing.

It is agreed between the parties on both sides that, in the event of a final decision in this case by the court at this term, either way, for complainants or defendant, *that* the party against whom said decree may be made shall be considered as having prayed an appeal, and that the same has been allowed to him in open court. This agreement to be entered as equivalent to such prayer and allowance, and that such appeal may be executed at any time within three months from the date of said decree, upon giving such bond and security as [is] required by law, to be approved of by Wm. H. Brown, clerk of said court.

MAYES & CLIFTON,
Sol. for Perkins.
By C. A. CLIFTON.
JOHN HENDERSON,
Sol. for complainants.

Jackson, May 22d, 1849.

"Report of W. H. Brown, master in chancery.

UNITED STATES OF AMERICA,
Southern district of Mississippi.

Circuit court, U. S.

EDWARD P. FOURNIQUET and HARRIET, his wife, MARTIN W. EWING and ANN S., his wife, complainants,
vs.
JOHN PERKINS, defendant. } 158.

In chancery.

To the honorable the circuit court of the United States, for the ninth circuit and southern district of Mississippi.

Wm. H. Brown, the master appointed by this honorable court to state an account between the parties to the above stated cause, under and by virtue of a decree rendered therein, on the 22d of May, A. D. 1849, begs leave to report: That, after a full investigation of said cause, according to the terms of the decree, he finds the defendant is indebted to the complainants as follows, viz:

Amounts invested in Mississippi by defendant, John Perkins, during the existence of the marital community, to wit:

Purchase from Mahon and wife of property known as the "Briars," and paid during the marriage - - $8,000 00

Amount paid for improvements on same - -	15,000 00
Purchase of the "Elihu Hall Bay tract" in the "Lyman mandamus," 2,100 acres - - - -	5,000 00
Purchase from Shugar Turner of 500 acres of land in the "Lyman mandamus" - - - -	1,000 00
Purchase from Parker and wife of property in the city of Natchez - - - - - -	200 00
	$29,200 00
One half of said amount, $29,200 00, is - -	$14,600 00
Interest on $14,600, at 8 per cent. per annum, from 13th August, 1824, to 1st April, 1850, 25 years 7 months and 19 days, is - - - -	29,943 00
	$44,543 00
The amount due from defendant to the complainants is two-sevenths and two-thirds of one-seventh of said amount, $44,543 00, making due 1st April, 1850 -	$16,968 76

The master would further report to the honorable court that he finds the dates at, and the amounts for which, the aforesaid property was sold, (except a small portion of the "Briars,") to be as follows, to wit:

Deed from Perkins and wife to Jno. Watt for 50 acres of the "Briars" property, with the improvements, &c., dated 15th June, 1833 - - - -	$10,000 00
Deed from Perkins and wife to Geo. Lake, dated 7th March, 1822, 600 acres of the "Elihu Hall Bay" tract, purchase money not entirely paid until 1829 -	5,000 00
Sale from Perkins to McAlpin, 1,000 acres of the "Elihu Hall Bay" tract, for the sum of - - -	8,000 00

The defendant, Perkins, retains in his possession the following described lands, to wit, 49 $\frac{5}{10}\frac{6}{0}$ acres of the Briers property, purchased from Mahon and wife, as above stated. The master is unable to state, from the proof adduced, that the defendant, Perkins, retains in his possession any other property, purchased by him in Mississippi, during the existence of the marital community.

The master begs leave to refer the court to the accompanying document, marked "A," for the minutes of the proceedings had, and the testimony presented at the taking of the account herein.

Respectfully submitted,

W. H. BROWN,

Clerk and master in chancery circuit court, U. S., So. district Mississippi.

April 1st, 1850.

1507.

"*Document marked A.*"

Circuit court United States.

UNITED STATES OF AMERICA,
Southern district of Mississippi.

EDWARD P. FOURNIQUET ET UX. ET AL.
vs.
JOHN PERKINS. } 158. In chancery.

Proceedings before Wm. H. Brown, master in chancery, under and by virtue of a decree rendered by the honorable court aforesaid, at the May term, A. D. 1849.

Pursuant to notice issued to the solicitors of both parties, the master attended at his office in the city of Jackson, on the 6th day of August, 1849, for the purpose of hearing and determining the matters referred to him, according to the decree aforesaid; at which time an agreement was presented, dated July 16, 1849, signed by the solicitors of both parties, extending the time for hearing until the 4th Monday, the 27th August, 1849.

Monday, August 27, 1849.

Present, C. R. Clifton, esq., solicitor for defendant.

The complainants' solicitor being absent, cause adjourned until to-morrow morning, ten o'clock.

Tuesday, August 28, 1849.

Present, E. P. Fourniquet for complainants.

H. S. Eustis, C. R. Clifton, and A. N. Ogden, for defendants.

Tuesday, August 28.

The decree rendered in this case, referred to by complainants' fifth interrogatory in bill referred to, charging purchase of land from Mahon and wife in the vicinity of Natchez for the sum of $9,926, also payment of $8,000 during subsistence of community.

Defendant objects to amount of payment of $8,000 being shown, and contends that complainants must show that said amount accrued from the productive resources of marital community in Louisiana. Objection sustained.

Complainants granted leave to file bill of discovery vs. defendant within 20 days, to compel answer as to property or other means possessed by him in Mississippi during the subsistence of the marriage in Louisiana, or to prove the same by other legal evidence.

Defendant allowed until second Monday of October next to answer said bill.

Cause adjourned until 2d Monday of October next.

Monday, October 8, 1849.

Since the adjournment of this cause on the 28th of August last, the matter submitted to his honor the chancellor—the question in regard to the objection sustained by him on 28th August last—requiring complainants to prove from whence the funds were derived with which such payments were made in purchase of property in Mississippi during the marital community in Louisiana, and received the following instructions from the chancellor; upon which instructions the decision sustaining said objection was reversed.

"*Copy of instructions from chancellor.*

ABERDEEN, MISS., *Sept.* 13, 1849.

DEAR SIR: Yours of the 6th instant is before me * * * In the case of Fourniquet et al. vs. Perkins, it is only necessary for you to ascertain the amount of funds vested by Perkins in Mississippi during the community. As to the source from which Perkins derived the funds, that is for the chancellor under all the proof.

In haste, as I am weak, yours, &c.,

S. J. GHOLSON.

MONDAY, *October* 8, 1849.

Hearing resumed. Present, the solicitors for both parties. Complainants offered testimony as follows, to wit:

1st. Deed from Mahon and wife to Perkins, to show purchase of $99\frac{256}{1000}$ acres of land for $9,926, dated 13th October, 1818; property known as the "Briers." (See deed copied on pages 20, 21, and 22.)

2d. Answer of Perkins in the case of Fourniquet et ux. and Ewing et ux. vs. Perkins, in the circuit court of the United States.

5th district and circuit of Louisiana to show costs of improvements of "Briers," $15,000.

"*Answer of Perkins above referred to.*"

In the circuit court of the United States, for the fifth circuit and eastern district of Louisiana.

E. P. FOURNIQUET AND WIFE and Martin W. Ewing and wife, plaintiffs,
vs.
JOHN PERKINS, defendant.
} In equity.

The answer of the defendant, John Perkins, to the bill of complaint and discovery of the said Edward P. Fourniquet and Harriet J., his wife, and Martin Wickliffe Ewing and Ann S. Ewing, his wife, complainants. This defendant, saving and reserving to himself all manner of exception to the many uncertainties, &c., &c., in the said com-

plainants' bill contained for answer thereto, or so much thereof as he is advised it is material or necessary for him to answer unto, he answers and says:

That true it is, this respondent did, on the 12th *twelfth* day of August, in the year of our Lord one thousand eight hundred and eighteen, intermarry with Mrs. Mary Bynum, the widow of Benjamin Bynum, deceased, and mother of said complainants, Harriet Jane and Ann S., and that the said marriage was solemnized in the parish of Concordia, where this respondent and his said wife then resided, and that the estate of the said Benjamin Bynum, deceased, was assessed in the assessment rolls of the taxes of the said parish, made in the month of March, eighteen hundred and eighteen, for the property as set forth in the said complainants' bill, the estate of the said Benjamin Bynum was unincumbered, so far as this respondent knows or is informed. There was about the sum of three hundred and sixty-six dollars in principal and interest received by this respondent after his marriage, from Francis A. Bynum, for moneys due by him to the estate of the said Benjamin Bynum. There was also a sum of one thousand and eighty-seven dollars 18¾ cents due the estate of respondent's deceased wife, which this respondent received from Thomas and David Alexander, after the decease of said wife, which sum this respondent accounted for to the complainants as heirs of his said wife in the year one thousand eight hundred and twenty-seven, although he did not actually receive the money himself from the said Alexanders until the year one thousand eight hundred and thirty-one.

There was also received from Turner Bynum the sum of sixty-three dollars and ninety cents, making in the aggregate the sum of fifteen hundred and seventeen dollars and 8¾ cents, which is all that this respondent did ever receive on account of the estate of Benjamin Bynum, deceased, and for which sum he fully accounted to the said complainants and others, the heirs of said Benjamin Bynum and of Mary Perkins, deceased, in a full, fair, and complete settlement made with them in the year one thousand eight hundred and twenty-seven. This respondent has now no recollection of any other sums received either on account of the estate of Benjamin Bynum, deceased, or of his deceased wife; with respect to the debt due from the estate of Henry Rives, deceased, the brother of his deceased wife, he has no recollection thereof; but he does know and well recollects the estate of the said Rives was insolvent, and that two slaves, Abb and George, which were inherited by his said wife from the estate of her said brother, and which had been delivered to this respondent, were, upon the insolvency of the said estate being declared, redemanded of this respondent for the payment of the debts of said estate, and that this respondent did actually pay their appraised value. And the said two slaves had been before accounted for and divided among the complainants and other heirs of his deceased wife as part of her estate. This respondent denies that at or about the time of his marriage aforesaid he was embarrassed in his pecuniary affairs, as is falsely charged in the said bill; but, on the con-

trary states, and so the truth is, that he was at that time in good and unembarrassed circumstances, and was possessed of large and ample property and means both in Louisiana and Mississippi, and of ready money to a large amount.

This respondent does most expressly deny, that he ever did give his deceased wife to understand that the Bynum force was to commence a new plantation for themselves in the rear of this respondent's Somerset plantation, on lands purchased about the time of the removal for that purpose, and paid for in whole or in part out of the Bynum crops of eighteen hundred and eighteen and eighteen hundred and nineteen, or by any sums of money collected by this respondent on account of the Bynum estate. And he does most expressly state, that the cause of the removal of the said slaves was the great liability of the Bynum plantation on Lake Concordia to be overflowed by the high waters, and the great uncertainty of raising crops thereon; and alleges most expressly, that all the charges in the said complainants' bill in relation to this matter are false and without any foundation.

This respondent denies that any such understanding or agreement between himself and his deceased wife, as is charged in the said bill relative to the product of the Somerset plantation, or of the property he might acquire, or any agreement in relation to acquets and gains, did ever exist; but that the said property was used, worked, and administered with the view solely to the legal and equitable rights of the parties interested, and in relation to which a true, just, and equitable account has been rendered to the complainants and accepted by them; and he expressly states, that all the charges and allegations contained in the said bill in relation to these matters are untrue.

This respondent further answering says, that all the charges in the said bill of said complainants, in relation to debts paid and to property acquired by him in the State of Mississippi, or elsewhere, out of the State of Louisiana, are perfectly groundless and without foundation; that he paid his debts out of his own means, and purchased and paid for property in the State of Mississippi with his own moneys or credit, and that the complainants have no legal or equitable claim upon him, arising either from the payment of his debts or the purchase of property as aforesaid.

This respondent further answering says, that the slaves and property charged in said complainants' bill as having been purchased during this respondent's marriage from Edward Broughton, were never actually purchased by him for his own account, nor were they ever his property, or in his possession, or any thing paid by him for the same, nor did they ever form any part or portion of any property actually acquired by him during the continuance of his marriage. It is true, they were conveyed to him by the said Edward Broughton, by deed as set forth in the complainants' bill, and on the fact of the said act of sale the same appears to have been an absolute and unconditional sale and conveyance; but this respondent states, and so the truth is, that the said conveyance was made upon the express trust and understanding with

the said grantor, Edward Broughton, that this respondent should hold the same in trust for the wife and children of the said Broughton, and for their use, benefit, and support, and should, at any time, when so required, be reconveyed or settled and disposed of for the uses aforesaid, which was actually done by this respondent by deed to Mrs. Sarah Broughton, executrix, on the nineteenth day of June, eighteen hundred and nineteen, and now of record in the said parish of Concordia, to which for greater certainty this respondent refers, and which he will hereafter exhibit; and this respondent avers and sets forth, that the object of the said conveyance to him, in trust as aforesaid, was to secure to the wife of said Edward Broughton moneys or property which she had brought in marriage, and intended to operate as a settlement upon her without prejudice to any person, the said Broughton being then out of debt. And this respondent was chosen as trustee from his intimacy with the family, and the confidence they reposed in him.

In respect to the land alleged in said bill to have been purchased from one House, by deed dated on the thirtieth day of September, eighteen hundred and eighteen, this respondent answering says, that the said House was a mere squatter on the public lands in that quarter, and had no title to any specific quantity of land, and was in the occupation of a small but undefined portion of the public domain; that he did not acquire from him any title to any lands whatever, but only purchased out any right he might have to the clearing and improvement he had made, more with a view to get rid of the said House from the neighborhood than for the value of his right; and that he never did acquire title to any land by virtue of his purchase and deed of conveyance from the said House, who had no title himself; and subsequently the Turo claim, purchased from Gamaliel Pease, was located on the same land.

In relation to the charge in the said complainants' bill for lands purchased from Chauncey Pettybone, curator of the estate of Alexander McCormac, this repond[ent] answering says, that it is true that the land mentioned in said bill was adjudicated to him at the sale of the estate of the said McCormac, made by the court of probates of the parish of Concordia, on the sixteenth day of December, eighteen hundred and eighteen, for the price of one hundred dollars; but this respondent avers, and so the truth is, that the said sale or adjudication was null and void, and he acquired no title to the said land thereby, it subsequently appearing that the said McCormac was not dead, and that administration or curatorship of his estate had been wrongfully granted to the said Pettybone, at the instance of one Jonathan Thompson, he, the said Thompson, paid and refunded to this respondent the price at which the said land had been adjudicated to him; and this respondent assigned and transferred to said Thompson all the rights he had acquired under and by virtue of the said adjudication, both which adjudication and assignment and transfer to Thompson took place during his marriage, and before the dissolution thereof by the death of his wife. And this respondent never did acquire any title nor had any

real interest in the said land until the ninth day of January, 1827, when he purchased the same from Israel Loring for the sum of $8,000, he, the said Loring, having acquired a good title to said land from the said McCormac in his lifetime, which said last purchase was made long after the death of his wife, and the dissolution of the community, and the price paid out of the respondent's own individual means, resulting from sales of a portion of his property in the State of Mississippi; and what is called in the said bill a pre-emption right in the rear thereof, was only 138 acres, which were located and surveyed under the act of Congress in favor of front proprietors, as appurtenants to and by virtue of his property in the front tract, so purchased by him, and which location and survey was made by this respondent after the purchase from Loring, and only embraced the said 138 acres of land, because all other lands in the rear had been previously located and appropriated, although Loring had entered and paid for the whole.

As it regards the charge in said complainants' bill respecting the Warner, Carroll, and Turo tracts of land, purchased from Gamaliel Pease, this respondent admits, that on the 1st day of March, 1820, he did purchase from the said Gamaliel Pease three tracts of land, situated and described in the deed of conveyance of the said Pease and wife of that date, which will be exhibited. That this respondent resided at that time with his family in the State of Mississippi. The deed of conveyance called for land on the waters of the Tensas river, and the actual location was vague and uncertain; and this respondent did not come into possession of any such land as is described in the said deed, but afterwards located and surveyed the same on that part of the public domain situated in the rear of the McCormac tract, and of which actual and official surveys and locations were not completed and approved until some time in or about the year 1830, and upon which surveys the quantity of land fell considerably short of that set forth in said complainants' bill.

As to the charge in the said bill respecting the lands purchased from William Collins this respondent says, that the circumstances of the said purchase are in all respects the same as those above stated in relation to the Warner, Carroll, and Turo tracts, and that he never did come to the possession of any land on the river Tensas, as described in the deed from Collins to him.

In relation to the land charged as having been purchased by this respondent from Watson, curator of Patterson, this respondent answering says, that he never did acquire any title to land by the said adjudication or purchase from the estate of Patterson; that the said Patterson had no title to any such land; that, in fact, the land so sold as belonging to the estate of Patterson were public lands upon which he had entered, and was the same settlement or right which this respondent had purchased from Isaac House, as heretofore set forth in this his answer. That the lands thus settled upon by House and by Patterson afterwards merged in the public domain, and were in part sold out by the United States to other persons, from whom afterwards this res-

pondent purchased the same long after the death of his wife, and part to this respondent himself, with the exception of a small portion, which was afterwards covered by this respondent in locating the tract purchased by him from Collins, as he has before stated; and he says, and so the title will show, that no specific or determinate quantity of land was ever sold or pretended to be sold either by the said House or the curator of Patterson to this respondent.

In relation to the 516 acres of land purchased from the United States, as charged in the said complainants' bill, this respondent admits that he did, by virtue of the act of Congress passed on the day of , 1820, enter and obtain title to 489 acres of land in the rear of his land, called the Bullock tract, which privilege was accorded to him by the said act of Congress, in virtue and by reason of his possessing the lands fronting on the river, as will appear by the provision of the act; and the said land in front, to which the said land so entered in the rear was an appendage, was his own separate property, and owned and possessed by him long before his marriage.

In regard to the land charged in the said complainants' bill as having been purchased from Samuel Gustine, this respondent answering says, that he acquired no land by virtue of the conveyance from the said Gustine; that by some means not now particularly recollected by this respondent, but he believes by virtue of a sale for taxes assessed on the lands in the name of I. House, the said Gustine had, or pretended to have, acquired some right or pretension to the lands charged in the said bill as purchased as aforesaid, and which was the same land alleged to have been purchased by this respondent from Isaac House, as above stated in this respondent's answer to that part of said complainant's bill; and this respondent only purchased from the said Gustine his outstanding right or pretension thereto for the sum of $53 24c.; and the conveyance from said Gustine to this respondent is for the same land, the right to which he had before purchased from House, and which, as before stated, was of no value, and did not vest in this respondent any real or valid title to any land.

In relation to the charge in said complainant's bill respecting other property belonging to the community which existed between himself and his wife, amounting to $59,867 16 [cents], this respondent further answering says, that he admits that at the death of his wife, in the year 1824, there was a crop of cotton growing upon the respondent's plantation in the parish of Concordia, which, when gathered and sent to market, did produce the sum set forth in the said complainants' bill, but this respondent denies that the same was any part of the acquets and gain of any community which ever existed between himself and his deceased wife, or that the complainants had or have any just right, in law or equity, to any part or portion thereof as such; and this respondent avers that he has rendered to the said complainants a just and true account, and has paid to them their just and true portion of the said crop, and all others made by him, arising from the work and la-

real interest in the said land until the ninth day of January, 1827, when he purchased the same from Israel Loring for the sum of $8,000, he, the said Loring, having acquired a good title to said land from the said McCormac in his lifetime, which said last purchase was made long after the death of his wife, and the dissolution of the community, and the price paid out of the respondent's own individual means, resulting from sales of a portion of his property in the State of Mississippi; and what is called in the said bill a pre-emption right in the rear thereof, was only 138 acres, which were located and surveyed under the act of Congress in favor of front proprietors, as appurtenants to and by virtue of his property in the front tract, so purchased by him, and which location and survey was made by this respondent after the purchase from Loring, and only embraced the said 138 acres of land, because all other lands in the rear had been previously located and appropriated, although Loring had entered and paid for the whole.

As it regards the charge in said complainants' bill respecting the Warner, Carroll, and Turo tracts of land, purchased from Gamaliel Pease, this respondent admits, that on the 1st day of March, 1820, he did purchase from the said Gamaliel Pease three tracts of land, situated and described in the deed of conveyance of the said Pease and wife of that date, which will be exhibited. That this respondent resided at that time with his family in the State of Mississippi. The deed of conveyance called for land on the waters of the Tensas river, and the actual location was vague and uncertain; and this respondent did not come into possession of any such land as is described in the said deed, but afterwards located and surveyed the same on that part of the public domain situated in the rear of the McCormac tract, and of which actual and official surveys and locations were not completed and approved until some time in or about the year 1830, and upon which surveys the quantity of land fell considerably short of that set forth in said complainants' bill.

As to the charge in the said bill respecting the lands purchased from William Collins this respondent says, that the circumstances of the said purchase are in all respects the same as those above stated in relation to the Warner, Carroll, and Turo tracts, and that he never did come to the possession of any land on the river Tensas, as described in the deed from Collins to him.

In relation to the land charged as having been purchased by this respondent from Watson, curator of Patterson, this respondent answering says, that he never did acquire any title to land by the said adjudication or purchase from the estate of Patterson; that the said Patterson had no title to any such land; that, in fact, the land so sold as belonging to the estate of Patterson were public lands upon which he had entered, and was the same settlement or right which this respondent had purchased from Isaac House, as heretofore set forth in this his answer. That the lands thus settled upon by House and by Patterson afterwards merged in the public domain, and were in part sold out by the United States to other persons, from whom afterwards this res-

pondent purchased the same long after the death of his wife, and part to this respondent himself, with the exception of a small portion, which was afterwards covered by this respondent in locating the tract purchased by him from Collins, as he has before stated; and he says, and so the title will show, that no specific or determinate quantity of land was ever sold or pretended to be sold either by the said House or the curator of Patterson to this respondent.

In relation to the 516 acres of land purchased from the United States, as charged in the said complainants' bill, this respondent admits that he did, by virtue of the act of Congress passed on the day of , 1820, enter and obtain title to 489 acres of land in the rear of his land, called the Bullock tract, which privilege was accorded to him by the said act of Congress, in virtue and by reason of his possessing the lands fronting on the river, as will appear by the provision of the act; and the said land in front, to which the said land so entered in the rear was an appendage, was his own separate property, and owned and possessed by him long before his marriage.

In regard to the land charged in the said complainants' bill as having been purchased from Samuel Gustine, this respondent answering says, that he acquired no land by virtue of the conveyance from the said Gustine; that by some means not now particularly recollected by this respondent, but he believes by virtue of a sale for taxes assessed on the lands in the name of I. House, the said Gustine had, or pretended to have, acquired some right or pretension to the lands charged in the said bill as purchased as aforesaid, and which was the same land alleged to have been purchased by this respondent from Isaac House, as above stated in this respondent's answer to that part of said complainant's bill; and this respondent only purchased from the said Gustine his outstanding right or pretension thereto for the sum of $53 24c.; and the conveyance from said Gustine to this respondent is for the same land, the right to which he had before purchased from House, and which, as before stated, was of no value, and did not vest in this respondent any real or valid title to any land.

In relation to the charge in said complainant's bill respecting other property belonging to the community which existed between himself and his wife, amounting to $59,867 16 [cents], this respondent further answering says, that he admits that at the death of his wife, in the year 1824, there was a crop of cotton growing upon the respondent's plantation in the parish of Concordia, which, when gathered and sent to market, did produce the sum set forth in the said complainants' bill, but this respondent denies that the same was any part of the acquets and gain of any community which ever existed between himself and his deceased wife, or that the complainants had or have any just right, in law or equity, to any part or portion thereof as such; and this respondent avers that he has rendered to the said complainants a just and true account, and has paid to them their just and true portion of the said crop, and all others made by him, arising from the work and la-

bor of the slaves they inherited from their father and mother being used in producing the same.

As respects the sheep, horned cattle, horses, mules, and colts charged as being in the possession of this respondent at the death of his wife, this respondent admits that there were, at the death of his said wife, on his plantation in the parish of Concordia, a number of sheep, horned cattle, horses, mules, and colts, but he does not now, after a lapse of 20 years, know or recollect the number of each, or the value thereof in money; nor has he now any means of ascertaining what number of each then existed, but he does not believe that they approached the number set forth in the said complainants' bill; but this respondent avers that whatsoever number did then exist, they were the sole and exclusive property of this respondent, and that the said complainants had no lawful or just claim to any part thereof, as acquests and gains of a community between himself and his wife, as this respondent is advised and believes.

In relation to the price of land sold to George Lake this respondent says, that the said lands were his own property, and never were, in any sense, community property; that the price was his own, and that the complainants have no lawful or just claim to any portion thereof; that he is not indebted to them, or in any manner accountable to them, for the sum of money, to wit, the half of $112,840, with interest thereon, as is claimed in the said bill, or any part or portion thereof.

This deponent, further answering, does most expressly deny all the fraud, concealment, and combination set forth and charged in the said complainant's bill; and he avers and sets forth, that, very shortly after his marriage, finding that the parish of Concordia, in the State of Louisiana, was totally destitute of all means of education, and having no children of his own at the time, he determined to move his residence to the State of Mississippi, in the neighborhood of the city of Natchez, where he purchased land, and made an expensive establishment, principally with a view to the better education of the children of his wife, of whom the complainants, Mrs. Ewing and Mrs. Fourniquet, were two.

That, until the period of their respective marriages, the said complainants continued to reside with him, and the respondent devoted his time to, and expended large sums of money in bestowing upon, them an education suitable to their condition in life, and at much greater cost than their fortunes would have entitled them to, had this respondent confined himself within the strict limits of their pecuniary means or expectations.

That his paternal and most affectionate endeavors and exertions to bring them up, and to educate them in a manner to fit and qualify them for any station in life, without regard to expense, was unremitted, until they respectively arrived at the age of majority, or became emancipated by marriage, when he rendered to them a just and true account of all the property they had inherited from their father and mother,

and divided the same among them, to their entire satisfaction at the time.

This respondent does most especially deny that at the time he rendered an account of his administration of the estate of the father and mother of the said complainants to the court of probates of the parish of Concordia, in the year 1827, that he concealed from the parties interested any of their rights, either in relation to the acquets and gains of any community which may have existed between his deceased wife and himself, or in relation to any other matters or things involved in the said account and settlement; but that, on the contrary, the same was rendered and the proceedings conducted in the most fair and open manner, and as it regards this respondent on the most liberal basis. The same was conducted contradictorily with Martin W. Ewing, the husband of one of the complainants and the brother-in-law of the other complainant, lawfully representing his wife and the interests of the other complainants, as their curator ad lite, and under tutor lawfully appointed by the said court of probates, as will appear by the proceedings in the said court of probates, referred to in the said complainants' bill, and to which respondent refers and exhibits as a part of this his answer.

Your respondent shows that the community of acquets and gains between husband and wife is the effect of law, and is not the effect of contract or stipulations; that the said Martin W. Ewing was at the time of said settlement a practising lawyer, and could not be ignorant of his own rights, those of his wife and his pupils, to whom he owed a sacred duty under the appointment which he had accepted as their curator ad lite and under tutor.

This respondent on the contrary believes, that all the parties in interest had full knowledge of all their rights in law and equity, and that throughout the whole of the transactions which ended in their final receipts and acquittances to this respondent, they were fully aware of every lawful equitable or just claim they could make upon this respondent.

This respondent further answering says, that his final account and settlement, as before referred to, was shortly afterwards followed by a partition of all the property left by the said Benjamin Bynum, the father, and your respondent's deceased wife, the mother of the said complainants, Ann S. Ewing and Harriet J. Forniquet, among all the children and heirs of the said deceased Benjamin and Mary Bynum, as will appear by the record of the court of probates of the parish of Concordia aforesaid, and the same are referred to for greater certainty, and are, or so much thereof as is necessary to show the said partition, exhibited and prayed to be taken as part hereof.

Your respondent further answering shows, that the rendition of accounts and the partition of the property aforesaid, among all the heirs of the said Benjamin Bynum and Mary Bynum, his deceased wife aforesaid, was carried into effect and finally consummated, so far as it regards the said complainants, Ewing and his wife, by their joint receipt

and acquittance, bearing date the 11th day of April, 1828, which is hereto annexed and exhibited, and prayed to be taken as a part of this his answer.

That on the 10th day of April, 1829, the same were fully approved, consummated, and confirmed by Benjamin S. Bynum, the son and co-heir of the said Benjamin Bynum and Mary Bynum, deceased, and by his sister, Mary C. Bynum, now Mrs. Eskridge, as will more fully appear by their joint receipt and release of the date hereto annexed and exhibited, and made part of this his answer; which receipt and acquittance was afterwards confirmed by the said Mrs. Eskridge, duly assisted by her said husband, who was then a judge of the Territory of Arkansas, by public and authentic act before the parish judge of said parish of Concordia, bearing date the 9th day of April, 1832, which is also hereunto annexed and exhibited, and prayed to be taken as a part of this his answer. And was finally confirmed and approved by the said complainants, E. P. Fourinquet and Harriet J., his wife, by their joint receipt and acquittance, bearing date the 27th May, 1834, before the parish judge of the parish of Concordia, as will appear by the said release and acquittance herein exhibited, and prayed to be taken as a part of this his answer.

This respondent expressly denies all the allegations in the said bill, in relation to the said receipts and acquittances, that they were obtained through any fraud, misrepresentation, or concealment on his part, as is falsely alleged on the said bill; but on the contrary avers that they were executed and given with a full knowledge of all their rights and pretensions by the respective parties, and for a full and valuable legal and equitable consideration. That the administration account rendered by him in 1827 was a most liberal and equitable settlement for the said complainants and their co-heirs, and afforded them advantages beyond what in law or justice they could claim from him. That at the time the said account was rendered and the partition aforesaid made, this respondent was the father of three children, born of his marriage with his said deceased wife, the mother of the complainants, Ann S. Ewing and Harriet J. Fourniquet, two of them then alive, (and the third died after the death of her mother, and to whom this respondent was heir,) all of them infants and incapable of contracting or alienating their rights; that upon the settlement and partition aforesaid being made this respondent, took upon himself to relinquish to the said complainants all the rights of his said three minor children, in and to all the property of which their mother died seized and possessed, and the same was actually divided among the said complainants to the entire exclusion of this respondent's three children aforesaid.

This respondent admits that this was in accordance with the last will and testament of his said deceased wife, a copy whereof is hereunto annexed and exhibited as part hereof; and that his respect for the wishes and intentions of his said wife would have induced him to execute the same, or to refrain from all steps to alter or change the same. But this respondent shows that the disposition of the said will were

contrary to the laws of the State of Louisiana, according to which the testatrix could not disinherit any one of her children, or deprive them of their legitimate portions of her estate. Under these circumstances it was equally out of the power of this respondent to grant or cede the rights of his children so as to bind them in law; and all that his respect for the wishes and intentions of his deceased wife, as expressed in her will, could have permitted him to do, would have been to suffer her will to be executed without positive and active opposition on his part, leaving it to his said children at any future time to assert their rights, and demand their legitimate portions of their mother's estate from the complainants, who had thus received the whole of it. But this respondent shows, that, at the time the settlement was made, and the partition of the property of Benjamin Bynum, the father, and Mary Bynum, this respondent's deceased wife, was made as aforesaid between the complainants, it was considered that natural equity and justice required that if the children of the first marriage took all the estate of the mother to the exclusion of the children of the second marriage, that the children of the second marriage should profit by the acquests and gains of the community of the second marriage, if any such community did exist, or there were any acquests and gains, and such was then considered to be the state of things in contemplation of the testatrix when she made and executed the will aforesaid; and that such was the meaning and intention of the said testatrix this respondent knows, because it was so repeatedly stated to him by the testatrix at the time of her making said will and after. This respondent did not at the time believe, nor does he now believe, that the said complainants had then, or now have, any just claims upon him arising from any gains of the community between him and his deceased wife, but respect for the wishes and interests of his deceased wife, and a clear understanding of an abandonment of all claims that might exist against him on account of the said community on the part of the complainant, and a desire to promote their prosperity and happiness, and to settle them as advantageously as possible in the world, induced him not only to acquiesce in the distribution of his wife's estate among the children of her first marriage to the exclusion of the children of the second marriage, but he did, upon the said partition and distribution being effected, execute to the complainant, Ewing, or to him and his wife, and for the benefit of all concerned, a bond to hold them harmless, and to indemnify them against all future claims of his said children upon the estate of their mother; which bond is still in force, and in possession of the said complainants or some one of them; and this respondent avers, that the principal and moving consideration of said bond was the abandonment by said complainants of all claims against him of whatever nature or kind. And this respondent avers, that the several receipts and acquittances mentioned and set forth in the said complainant's bill, to wit, that from Benjamin S. Bynum, the son, and his sister, Mary C. Bynum, now Mary C. Eskridge, and the complainants, Ewing and wife and Fourniquet and wife, as before recited, were intended to cover all and every claim that any of them might have by

reason of the supposed community, or any acquests and gains that might exist under or by virtue thereof, and has ever since been held and considered to that intent and purpose, and this respondent has ever since relied upon them for his peace, and quiet, and final discharge; and he avers and sets forth, the consideration therefor was a fair and equitable one, greater in point of value than anything which he obtained therefor, and much to the advantage of said complainants, and that there exists now no equitable or just cause to disturb them, and that all the allegations and charges in the said complainant's bill in relation to the infancy and ignorance of the parties, and the fraud, and concealment, and circumvention of the respondent, are untrue, and without any foundation.

This respondent further answering says, that the allegations in the said bill in relation to the settlement made by him with Benjamin S. Bynum, the son, and in relation to the exchange of lands as therein stated and set forth, are untrue; and this respondent states, and so the truth is, that at the period of the said settlement this respondent, still actuated by a sincere desire to promote the interests and the comfortable establishment of the children of his deceased wife by her first marriage, determined to secure to the said Benjamin S. Bynum, Mary C. Bynum, and Harriet J. Bynum, a plantation or tract of land each, upon which their slaves might be placed and form a permanent and valuable establishment for themselves; that, having counselled with the said Benjamin S. Bynum on the subject as to the best manner of arranging and settling this matter, it was agreed that this respondent should give to the said Benjamin S. Bynum the tract of land in the county of Claiborne, in the State of Mississippi, called Long Branch; and that the said Benjamin S. Bynum should give and convey to his sister, Harriet J., now Harriet J. Fourniquet, his interest of one fourth in the Concordia tract; and that this respondent should give to Mary C. Bynum, now Mary C. Eskridge, a tract of land or plantation in the neighborhood of Long Branch; and that she should also give to her sister, Harriet J., her undivided interest of one fourth in the Concordia tract of land inherited from their father and mother, which, united with her own fourth, would concentrate her interest there, and form a suitable establishment for her.

But the said complainant, Harriet J. Bynum, now Harriet J. Fourniquet, being at that time a minor and unmarried and absent at school at the North, the said Benjamin S. Bynum suggested to this respondent the propriety of delaying to make the titles of his said sister Harriet until she was of age or settled in the world; and in the spirit of confidence and affection which had ever and until the time of his death continued to exist between him and this respondent, that he, the said Benjamin S. Bynum, and his sister Mary C. should convey their interest in the Concordia land to this respondent, to be held in trust for their said sister Harriet, and to be conveyed to her at a proper time, and for her greater interest and advantage, and in pursuance of this agreement the said Benjamin S. Bynum and Mary C. Bynum did convey to your re-

spondent their undivided interest in the said lands, by deed bearing date on the 21st day of April, 1829, which deed is hereto annexed and exhibited, and prayed to be taken as part hereof, and your respondent on the 1st day of May, 1829, did convey to the said Benjamin S. Bynum the land or plantation called Long Branch, by deed of that date, which is also herewith exhibited, and on the same day did convey to Mary C. Bynum a tract of land in the neighborhood of Long Branch, by deed of that date, which is also herewith exhibited.

Your respondent further shows, that he held the said undivided portions of the Concordia lands on the trust aforesaid until the year 1832, when the said Harriet J. sold her undivided interest in those lands to her brother-in-law Ewing, and by that means the original design of concentrating her interest and forming a permanent and available establishment for her on the Concordia lands could no longer be carried into effect with advantage to herself; he thought it best to give her other land in the same neighborhood with and adjoining the Long Branch plantation, of which she was then one half proprietor by the death of her brother, and having consulted with Judge Eskridge, the husband of Mary C. Bynum, as to the propriety of making this change, who except this respondent was the nearest friend of the family and most capable of advising for their best interest, and who expressed to this respondent his entire concurrence in his views as best calculated to promote the interests of the said Harriet J., and in consequence thereof this respondent did, on the 25th day of December, 1833, convey to the said Edward P. Fourniquet, the husband of the said complainant Harriet J., his undivided interest in a tract of land in Claiborne county, Mississippi, by deed of that date, which is herewith exhibited, in full discharge of the trust aforesaid, which was accepted by the said complainants, Fourniquet and wife, without complaint or objection, without any intimation of dissatisfaction on the part of either of them.

This respondent denies that there was any exchange of lands between him and the said Benjamin S. Bynum for any purpose, but such as is herein before set forth; he denies that there was any defect in the title of any of the lands so conveyed by him to the said Benjamin S. Bynum or the complainants, Fourniquet and wife, or Mary C. Bynum, or that they or either of them have been disturbed or molested in the peaceable and quiet enjoyment thereof, or that he has derived any pecuniary advantage to himself from any of the above transactions; on the contrary this respondent states, that on the day of or about that time; the said Benjamin S. Bynum departed this life, and that the said complainants, Ewing and wife, and Fourniquet and wife, together with Mary C. Eskridge, have entered upon his estate as heirs-at-law, and have divided the same among them, and among other things the Long Branch plantation so conveyed as aforesaid to him by your respondent, and they have continued to hold and enjoy the same until this time. He avers that the Long Branch plantation was a most valuable property; that the said Fourniquet and wife have sold their one half interest therein for a large price, and have appropriated said price

to their own use, to the amount of at least $30,000, as this respondent is informed and veribly believes. This respondent expressly denies that any such judgment was rendered against him in any court of the State of Mississippi or elsewhere, as is set forth in the said complainants' bill.

This respondent states that, relying upon the statement made with the said complainants as herein before set forth, and upon the validity of their several receipts and acquittances, and upon the good, faithful, and equitable intentions of the said complainants, and their good feelings in consequence of the many advantages allowed them in final settlement made with him, he had proceeded to pay all the debts of the community, amounting to a large sum of money, and to make extensive and valuable improvements upon his property, when he was disturbed in his peace and quiet by the said Fourniquet and wife, the complainants, and that he did thereupon institute a suit to enforce the condition upon which the Long Branch plantation had been granted; but he avers that the whole statement in the said bill in relation to the judgment rendered therein, and the declarations and sayings of his counsel as to the motives and conduct of this respondent, are untrue, and that no final decision to his knowledge has ever been rendered therein.

Your respondent further answering shows, that among other great advantages allowed to the said complainants in the final settlement made with them, such as the payment of all the debts of the community as aforesaid, without charging them any part thereof, the giving up to the said complainants all the interest of his three children in the succession of their mother as herein before stated, and guaranteeing the said complainants against any claims therefor; there were two other children born of the marriage of the said Benjamin Bynum and Mary, his wife, to wit, Francis H. Bynum, and Henry Rives Bynum, who were alive at the time of the death of their father, and who died previous to their mother, and whose portion in the estate of their deceased father, was, by the laws of Louisiana inherited by their mother as their heir-at-law, and in which portion his three children aforesaid was entitled to share by inheritance from their mother, and of which no notice or advantage was taken in the settlement and partition made with and among the said complainants.

Your respondent further answering shows, that, notwithstanding all the advantages allowed to the said complainants, as herein before stated, and the donations as aforesaid, by which they have reaped such great profit and advantage, the said complainants, contrary to equity and good conscience, are seeking to disturb your respondent, and to vex and harass him, by preferring against him the stale and unjust demands set up in their said bill of complaint.

And this respondent, finally, denying all the fraud, concealment, collusion, and combinations charged in the said complainants' bill, and especially denying all and singular the allegations of the said bill, not herein before especially answered to and denied or explained, prays that

the said complainants' bill may be dismissed with costs, that your respondent may be quieted in the peaceable enjoyment of his property and estate from all the matters and claims so unjustly set up against him in and by the said complainants' bill, and that he may have all such other decree and relief in the premises as to justice and equity and good conscience may appertain.

And this respondent further answering, will now proceed to answer, as far as lapse of time and circumstances attending the matters and transactions set forth in the said bill will permit him, the special interrogations propounded by the said complainants.

This respondent, in answer to the special interrogatories propounded to him by the said complainants in their said bill, he answers them as follows:

To the first interrogatory he answers, that he did, at the time stated in the said interrogatory, intermarry with Mrs. Mary Bynum, widow of Benjamin Bynum, dec'd; and at the time of said marriage both this respondent and his wife resided in, and were citizens of, the State of Louisiana.

To the 2d interrogatory this respondent answers, that his said wife did die, on or about the 12th of August, 1824, at the residence of this respondent, in the State of Mississippi.

To the 3d interrogatory this respondent answers, that, at the time of his marriage as aforesaid, his wife did reside on the plantation on which her first husband had resided.

To the 4th he answers, that at the time of his marriage he did cultivate a plantation on the Mississippi river, in the same parish and State, being a part of the lands called the Somerset estate, which then consisted of upwards of three thousand acres of land, six hundred and twenty-seven of which I hold by absolute grant, the rest by various titles purchased from squatters, who claimed title by occupancy, and a part by my own occupation; and to which was afterwards added so much of the double concessions in the rear of the original grant of 677 acres as there was unappropriated public lands to satisfy, under the act of Congress of the day of , 1820.

To the 5th this respondent answers, that he has not the tax list now before him, and cannot say on oath what it contains, but the assessment roll of the said parish will show what property of the estate of Benjamin Bynum was assessed for the taxes of the year mentioned in this interrogatory, and to which assessment roll this respondent refers for a full answer to this interrogatory.

To the 6th interrogatory this respondent answers to the same effect as to the last.

To the 7th this respondent says, that no family meeting was convoked, for the purposes mentioned in this interrogatory, to his knowledge.

To the 8th this respondent answers, that at the time of his marriage he caused no inventory and appraisement of the estate of Benjamin Bynum to be made and returned to the court of probate; this re-

spondent was then, and is still, unaware that any such proceeding was necessary or required by law, an inventory and appraisement having been made about three years before in the course of the mortuary proceedings of Benjamin Bynum, and of record in the court of the probates of said parish.

To the 9th this respondent answers, that after the death of his wife, in 1824, he caused no such inventory and appraisement to be made as is mentioned in the interrogatory.

To the 10th this respondent says, that he did not qualify himself by authority of the probate court, to administer the estate of Benjamin Bynum and his deceased wife, at any time previous to the year 1827.

To the 11th this respondent answers, that when the Bynum negroes were removed from the Lake Concordia plantation, in 1820, such removal was made with the consent and at the desire of his said wife, and no such authority from the court of probates was deemed necessary, and none applied for.

To the 12th interrogatory this respondent answers, that he never did act as clerk of any court of Louisiana; that he was for a time parish judge of the parish of Concordia, and he resigned his said office of judge, to the best of his recollection, some time in the year 1818.

To the 13th interrogatory this respondent answers, that when the slaves mentioned in this interrogatory were removed from the Lake Concordia plantation, they were placed upon a portion of the Somerset estate, as it is described in his answer to the fourth interrogatory, the titles to which are set forth in his answers to the said 4th interrogatory; this immediate location was in the rear of the lands cultivated in front on the river, but there was no particular tract of land, nor any specific number of acres, set apart for their labor and cultivation, but they were employed in the labor of the entire estate, wherever it was most wanted or judged most advantageous.

To the 14th this respondent answers, that several small cabins were erected for the accommodation of the said slaves; that they were under the superintendence of a man named Hoover, under whom they were removed, but Hoover was dismissed about three or four months after the removal, and after that time they were under no particular superintendence, except of the overseer of the plantation on the river.

To the 15th interrogatory this respondent answers, that the whole ridge of land, containing three thousand acres and upwards, as described in his answer to the fourth interrogatory, was and is now called Somerset; that this respondent had an overseer on that part of the land on the river, and who, after the dismissal of Hoover, as set forth in his answer to the last preceding interrogatory, occasionally visited and directed the labor of the slaves in the rear.

To the 16th interrogatory this respondent answers, that the slaves mentioned in this interrogatory remained on that part of the Somerset tract of land where they were first located, until some time in the spring or early in the summer of 1823, as well as this respondent now recollects, when the high waters and overflow of the river compelled

their removal to the higher lands in front, on the river, where they remained until the partition among the children of respondent's deceased wife by her first marriage.

To the 17th interrogatory this respondent answers, that there was a cane-brake, either on the spot or in the neighborhood of the spot, where the cabins of the said slaves were built, which, of course, was cut down and cleared up; and this clearing, together with the field that had been cleared, used, and occupied by the squatters, or occupants, whose rights had been purchased out by this respondent, formed the land upon which the said slaves were principally employed during the time they continued in said location previous to their removal to the front lands.

To the 18th this respondent answers, that after the removal of the slaves to the front of the Somerset tract, they were employed in such work or labor as they were capable of; but there were among them so large a proportion of old Africans, breeding and suckling women, and such an over proportion of young children, that they were not of much use in any heavy labor; they were generally employed principally in the light work of the plantation, on the river or front of the Somerset estate, as before described.

To the 19th this respondent answers, that there was not due to the estate of Benjamin Bynum, or to that of his deceased wife, the several sums of money in the complainant's bill set forth, to the knowledge of this respondent; that all the sums of money due to the estate of Benjamin Bynum or to his wife, at the time of his marriage, to the knowledge of this respondent, are those set forth in this his answer to that part of the said complainant's bill charging him with the receipt of the moneys alluded to in this interrogatory, amounting in all [to] the sum of fifteen hundred and seventeen dollars $8\frac{3}{4}$ cents, and for which he has accounted, as herein before stated.

To the 20th this respondent answers, that he did pay to Francis A. Bynum the amount of the notes mentioned in this interrogatory, that is to say, I paid three of the said notes during the coverture, and one thousand dollars on the fourth. The remainder I did not pay until 1826, it having *being* attached or held by some legal process until that time, and when the judgment was rendered this respondent paid the money according to the judgment.

To the 21st this respondent answers, that he cannot say that Messrs. Rutherford, Fisk & McNeil, paid the note for him, but found it in their hands, or that of one of the partners, and paid to them, as the agents authorized to receive it.

To the 22d this respondent answers, that all the said notes, as stated to have been paid by him in his answer to the two last interrogatories, were notes given by him for the purchase of twenty slaves, in the year 1812, from J. A. Bynum, on a credit of ten years, by yearly instalments; and which notes he paid as they respectively fell due, or at different periods after they became due, either to Bynum himself or

persons holding the same by transfer, or otherwise authorized to receive the amount.

To the 23d he answers, that he has no doubt that he paid to the Bank of Mississippi, in 1822, the amount which he then owed there; what the exact amount was, this respondent does not now recollect, not having made any memorandum or kept any account thereof; he had for some time before, and at the time of his marriage, a standing accommodation at that bank, which was sometimes enlarged and sometimes reduced; he thinks the amount then paid was upwards of two thousand dollars and less than three thousand.

To the 24th this respondent answers, that about the time mentioned in this interrogatory, he did purchase from Arthur Mahon a piece of land in the neighborhood of Natchez, in the State of Mississippi.

To the 25th this respondent answers, that he did pay to the said Mahon the amount of the four notes mentioned in this interrogatory, about the time specified.

To the 26th this respondent answers, that he did erect on the said land a dwelling house; that this establishment was called the "Briers;" that the house was large, and suitable to the number of his family; that it was furnished in a manner suitable to the wants of, and position, and comforts of his family. That he cannot say precisely what the building, levelling, fencing, furnishing, and other improvements, actually cost him, as he kept no account or memorandum thereof; but he believes they cost between ten and fifteen thousand dollars.

To the 27th this respondent answers, that he cannot say that he actually purchased from the said Elihu Hall Bay 2100 acres of land, as stated in this interrogatory. The facts of that transaction are these: This respondent was the owner of about two thousand acres of land in the Lyman mandamus, under a grant from the Spanish government, and which he had owned for some years previous; Bay claimed two thousand acres, or thereabouts, under the British grant, which was supposed to interfere with the lands of this respondent and to bring the two titles into conflict. This respondent did purchase from Bay his pretensions, under his British grant, to quiet his title under the Spanish grant; took a conveyance from him for the whole land claimed under it, and paid him the sum of five thousand dollars for his title.

To the 28th this respondent answers, that he being the owner of a considerable quantity of land in what was called the Lyman mandamus grant, and there being various outstanding claims or titles to land within the limits of said grant which might interfere with this respondent's title, and among others a claim called the Hartley claim, and this respondent being anxious to perfect his title, did employ Mr. Sugars Turner to purchase for them the interest of one of the heirs of Hartly in the claim aforesaid. Mr. Turner made the purchase for this respondent, paid a thousand dollars for the same, and took a conveyance to himself; this respondent refunded to him the thousand dollars and took a conveyance to himself; whether the deed of conveyance was for a specific number of acres, or was the undivided interest of the heir

who sold, or what are the precise terms of the deed, this respondent does not now remember, as it is many years since he has seen the deed; but when produced it will speak for itself. But this respondent never came into the actual possession of any particular portion or quantity of land under, or by virtue of the said deed; he bought it as an outstanding claim or title which might interfere with his own title to lands he already possessed, to perfect his own title, and quiet his possession. This claim or title did interfere with the lands of said respondent as held under his title from E. Hall Bay, and which title was thus perfected, and part of it was conveyed to the complainant, Fourniquet, by the deed of the 25th December, 1833, as in his answer stated.

To the 29th this respondent answers, that the land or claim to land conveyed to him by Turner formed no part of the Long Branch plantation.

To the 30th this respondent answers, that the Long Branch plantation was a part, or was formed out of lands of much greater extent, originally about 2,000 acres, part thereof purchased by this respondent in the year 1816 from John Patterson, and the rest purchased in 1817. I paid Patterson, for the lands purchased from him, seventeen hundred dollars, and the other portion cost me from four to six hundred dollars; I purchased it from one Grymes, to whom I paid three hundred dollars for his title, and afterwards expended other moneys to perfect the title.

To the 31st this respondent answers, that Isaac House, the person mentioned in this interrogatory, was a mere squatter on the public domain, and had no real title to any lands; I purchased from him the right, which he supposed he had acquired by occupancy, with a view to get rid of him and his pretensions, so as to secure the lands without his opposition or interference, by purchase from the Government, or otherwise; although his receipt for the purchase money specifies cattle, I never got any; none were ever delivered to me; and having accomplished my object in getting rid of House and his pretensions to the land, I never troubled myself about the cattle, and never came into possession or acquired title to any specific quantity of land under my purchase from House.

To the 32d this respondent answers, that about the time mentioned in this interrogatory there was adjudicated to him, at the sale of the estate of Alexander McCormac, a tract of land, supposed to be 640 acres, for the price of one hundred dollars; but that shortly afterwards it appeared that the said McCormac was not dead, but only absent from the country; that administration of his estate had been improperly granted; that the sale to him was null and void; that the price he had paid was refunded to him, and the sale cancelled, and he acquired no title to any land thereby; that the granting of the administration on McCormac's estate to Pettybone had been mainly procured at the instance of one John Thompson; to him this respondent conveyed all the interest he acquired under the adjudication aforesaid, and who refunded to him the one hundred dollars he had paid to Pettybone, the administrator, and the sale was cancelled in that manner some time in 1821, or thereabouts, but long before the death of his wife.

To the 33d this respondent answers, that on or about the 9th of January, 1827, he did purchase from Israel Loring the same tract of land which he intended to purchase from the estate of McCormac, as stated in his answer to the last interrogatory, the said Loring having, in the mean time, acquired a good title thereto from McCormac, and for which he paid the sum of eight thousand dollars in notes; this purchase included the right to the back or second concession which Loring had entered and paid for to the Government.

To the 34th this respondent answers, that he did give to the said Loring, in payment for said land, the notes of McAlpin, for eight thousand dollars; which notes this respondent had taken from said McAlpin to secure the price of eight hundred or a thousand acres of land in the Lyman mandamus tract sold to him by this respondent; which lands were a part of the lands purchased from John Patterson and others, in 1816 and 1817, and the outstanding claim or title of E. Bay Hall to which he purchased, as is herein before stated in his answer to the 27th interrogatory.

To the 35th interrogatory this respondent answers, the right, under the act of Congress to the back or second concession, in the rear of the McCormac tract, amounting to six hundred and forty acres, was consummated by Loring and one Clark in 1821, by entering the same in the land office, and paying the money therefor into the treasury, and obtaining the receipt of the receiver of public moneys therefor; and was conveyed to this respondent by Loring in 1827, as is herein before stated.

To the 36th this respondent answers, that he did, on the 1st day of March, 1820, purchase from the said Gamaliel Pearce and wife three tracts of land, which are set forth and described in their deed to him of that date, which is hereto annexed, and exhibited as part of this answer.

To the 37th interrogatory this respondent answers, that he did, on the 26th day of March, 1820, purchase from William Collins, a tract of five hundred acres of land, as will appear by the deed made to him on that day, which is hereto annexed, and referred to as making part of this answer.

To the 38th interrogatory this respondent answers, that the said Patterson was a squatter on the public lands; that he had no other title or right to any land but that of occupancy; that the land occupied by Patterson was adjudicated to him at the sale of the estate of said Patterson; that no specific number of acres were acquired by the said adjudication; the deed of the curator, Watson, is hereunto annexed, and will shew the description of the land; that the settlement or occupancy of Patterson was of no value, but the object and chief inducement of the respondent was to clear his neighborhood of all such persons, and their pretensions to the land by occupancy. This land was afterwards included in grants or titles made by the Government to this respondent and others as part of the public domain. The thirty acres of land called for adjoining this respondent never found or took possession of un-

der the deed from Patterson's curator, his object being accomplished by getting rid of Patterson's pretensions to the principal settlement. The crop, consisting of corn standing in the field, worth as this respondent believes about one hundred and fifty or two hundred dollars; he gathered it and used it on his plantation.

To the 40th interrogatory this respondent answers, that he did obtain from the Government a patent in the year 1837 for four hundred and eighty-nine acres of land, as the back or second concession of the river tract of the Somerset estate, purchased by this respondent of S. Bullock in the year 1806, and which he had entered in the land office some time in the year 1821, under the act of Congress allowing *to* the privilege of entering such lands to front proprietors.

To the 41st interrogatory this respondent answers, that the tract of land mentioned in this interrogatory was the same purchased from Isaac House, as set forth in his answer to the 31st interrogatory, to which he especially refers as part of his answer to this interrogatory; that Samuel Gustine had acquired some right to the same by having purchased the same at a sale made by the sheriff of Concordia for taxes assessed upon House, which right this respondent purchased from the said Gustine for the sum of fifty-three dollars and twenty-four cents, with a view to extinguish all pretensions or claims under House, and he herewith exhibits the deed from Gustine to himself as part hereof.

To the 42d interrogatory this respondent answers, that some time in the year 1821, or between that and the year 1824, he did sell to George Lake a certain portion of the lands which he owned in the Lyman mandamus in Claiborne county, in the State of Mississippi, and which he acquired in the year 1816 and 1817, as herein before stated. The price for which he sold the same he does not now remember, but he believes the true consideration is expressed in the deed of conveyance, which he supposes is in the possession of his vendee, or some one claiming under him, and is not in the possession of this respondent.

To the 43d interrogatory this respondent answers, that he did not receive from Lake on the 1st of March, 1823, the sum of money mentioned in this interrogatory; this respondent received partial payments from Lake up to the year 1829 at various times, the particulars of which he does not now remember, and in 1829 he transferred the whole balance then due him from Lake in payment of other lands which he then purchased.

To the 44th interrogatory this respondent answers, that his crop on his Somerset estate did amount in the year 1824 to 268 bales, and was sold for the sum of $\$18{,}367\frac{16}{100}$. a just proportion of which sum was allowed to the complainants in the account rendered and settled in 1827, and which preceded their final receipts and acquittances, and the balance was applied to the expenses of the plantation for that year, to the payment of outstanding debts incurred during the continuance of his marriage, and in the support and education of his family.

To the 45th interrogatory this respondent answers, that he cannot say whether the tax list mentioned in this interrogatory represents him

as possessing 4,657 acres of land, or what the same was valued at on the said list, not having the same before him, nor does he now recollect on what number of acres of land he paid taxes that year, but the assessment roll or tax list will show the number of acres, the amount at which it was assessed, and the amount of the taxes charged thereon.

To the 46th interrogatory this respondent answers, that if the said tax list does assess to this respondent 3,317 acres of land in one item, then he supposes it must mean to embrace his Somerset estate, which did consist of about that quantity. If the whole amount of land on the said tax list was 4,657 acres, he supposes that it was comprised of the Somerset estate, the Bynum tract of one thousand [and] forty acres, which was assessed in his name after his marriage, and a tract of land supposed to contain 300 acres he owned on the Mississippi river nearly opposite Natchez, and which he has sold to Lapice.

To the 47th interrogatory he answers, that he did not, during the period mentioned in this interrogatory, purchase any other lands except those embraced in this his answer as herein stated, and admitted to have been purchased and acquired by him, with the exception of a lot in the town of Natchez, Mississippi, which may have been purchased within that period, and which he afterwards gave as a donation to the Natchez Academy.

Signed, OGDEN & GRYMES,
Solicitors for defendant.

John Perkins, the defendant, being duly sworn, doth depose and say, that all the matters and things set forth in the foregoing answer to the plaintiffs' bill and interrogatories, stated as of his own knowledge, are true, and that all stated from the information of others he believes to be true.

(Signed) JOHN PERKINS.

Sworn to and subscribed before me, this 6th day of January, 1845.

(Signed) THEO. H. McCALEB,
U. S. judge.

Exhibits attached to the answer.

Transcript of papers in the estate of Benjamin Bynum, deceased. Process verbal of family meeting.

STATE OF LOUISIANA, *parish of Concordia.*

Be it remembered, that on the 21st day of May, A. D. 1827, I, Robert Ogden, parish judge and ex officio judge of probate in and for the parish aforesaid, at my office in said parish, in pursuance of an order of the court of probates of the said parish, did convene a family composed of the relations and friends of the minors, Benjamin S. Bynum, Mary C. Bynum, Harriet J. Bynum, above the age of fourteen,

and John Perkins and William Perkins, under the age of fourteen, heirs of Benjamin Bynum and Mary Perkins, late of said parish, deceased, and now absent from the State, for the purpose of recommending fit persons to be "curator ad bona" and "ad lites" to the persons and estate of the said minors above the age of fourteen within the parish aforesaid, and also a fit person to be appointed tutor to the minors, under the age of fourteen, having estate in the said parish.

And the said family meeting, comprised of John D. Smith, Sugars Turner, Thomas Alexander, David Alexander, and George S. Guion, relatives and friends of the said minors within the said parish, having taken and subscribed the oath before me in such cases by law required, do recommend that John Perkins, of the parish aforesaid, be appointed and constituted curator "ad bona" to the persons and estates of the said minors above the age of fourteen, and Martin W. Ewing, of the said parish, to be "curator ad lites" to the said last mentioned minors; and also John Perkins, of the parish aforesaid, to be tutor to the persons and estates of the said minors under the age of fourteen as aforesaid, upon their complying respectively with the requisites of the law in such cases made and provided. And the said family meeting do hereby further recommend that a partition of the several estates of Benjamin Bynum and Mary Perkins, deceased, within the parish aforesaid, be forthwith made in kind, they deeming the same to be highly expedient and requisite.

JOHN D. SMITH,
SUGARS TURNER,
THOMAS ALEXANDER,
GEORGE S. GUION.

Witness[es] present:
JAMES NOULAN,
A. STANSBOROUGH.

In testimony whereof I have hereunto set my hand and affixed my seal of office, this 21st day of May, 1827.

ROBERT OGDEN, [L. S.]
Parish judge and ex officio notary public.

Estate of Benjamin Bynum, deceased.

THE STATE OF LOUISIANA,
Parish of Concordia, ss.

Be it remembered, that on this second day of March, in the year of our Lord one thousand eight hundred and twenty-seven, at the plantation called Somerset, the residence of the Hon. John Perkins, in the parish aforesaid, upon his petition, setting forth that he is about to present a final administrative account of the estate in his hands of Benjamin Bynum, formerly of the parish aforesaid, deceased, and to cause legal proceedings to be had to effect a judicial partition of the said estate among the heirs of the said deceased: I, Robert Ogden, judge of the

parish aforesaid, ex officio judge of probates in and for the said parish, proceeded to cause an inventory and appraisement to be made of the estate of the said deceased, and for other purposes. I appointed and authorized Joseph Smith, esq., and Mr. James Noalen, freeholders and residents of the said parish, appraisers to appraise and set a value on all and singular the said estate, who took and subscribed before me the oath by law in such cases prescribed; and the following is a just and true inventory and appraisement of all and singular the immoveable and moveable estate of the said deceased within the parish aforesaid, so far as the same were shown to us, or otherwise, after diligent inquiry came to our knowledge, viz:

1,040 acres of land on Lake Concordia, in the parish aforesaid, on which the deceased in his lifetime resided, valued at.....				$10,000 00
	The negroes, to wit:	Aged		
1	Negro man Frank.....	50	.....	200 00
2	" woman Maria.....	40	His wife.....	300 00
3	" boy Alexander.....	14	Child of Frank & Maria...	350 00
4	" boy Anderson.....	9	....do.....do.....do....	250 00
5	" girl Fanny.....	7	....do.....do.....do....	200 00
6	" girl Lucy.....	5	....do.....do.....do....	200 00
7	" boy Parker.....	3	....do.....do.....do ...	150 00
8	" boy Frank.....	1	....do.....do.....do....	100 00
9	" man Will.....	50	.....	300 00
10	" woman Dinah.....	33	Wife of Will.....	400 00
11	" girl Rose.....	13	Child of Will and Dinah...	300 00
12	" boy George.....	7	....do.....do.....do....	250 00
13	" boy William.....	5	....do.....do.....do....	200 00
14	" boy Robert.....	3	....do.....do.....do....	150 00
15	" girl Celia.....	1	....do.....do.....do....	100 00
16	" man Miambo.....	50	.....	200 00
17	" boy Abraham.....	16	Child of Miambo.....	200 00
18	" girl Polly.....	14	....do.....do.....	300 00
19	" girl China.....	12	....do.....do.....	250 00
20	" boy Tom.....	5	....do.....do.....	200 00
21	" woman Judah Myers..	25	.....	400 00
22	" boy Edward.....	4	Child of Judah Myers.....	150 00
23	" boy Hanay.....	7 mo.	....do.....do.....	50 00
24	" man Daniel.....	50	.....	250 00
25	" boy Little Daniel.....	14	Child of Daniel.....	400 00
			Carried forward.....	$15,850 00
			Am't bro't forward...	15,850 00
26	" boy Patrick.....	13	Child of Daniel.....	350 00
27	" boy Lewis.....	5	....do.....do.....	200 00
28	" woman Sarah.....	47	Wife of Daniel.....	200 00
29	" woman Miliey.....	37	.....	350 00
30	" boy Ned.....	16	.....	400 00
31	" man Billy.....	33	.....	300 00
32	" woman Sukey.....	33	.....	400 00
33	" boy David.....	9	.....	300 00
34	" boy Moses.....	7	.....	250 00
35	" girl Lucy.....	5	.....	200 00
36	" girl Eleanor.....	3	.....	150 00
37	" girl Leah.....	1	.....	100 00
38	" woman Judy Mooney..	25	.....	400 00
39	" girl Caroline.....	5	Child of Judy Mooney.....	200 00
40	" girl Jane.....	2	....do.....do.....	150 00

APPRAISEMENT—Continued.

	The negroes to wit:	Aged		
41	Negro man Simon	50		$200 00
42	" woman Jane	35	Wife of Simon	350 00
43	" woman Sally, and	20		450 00
44	" girl Jenney	1	Sally's child	
45	" boy Jack	16		400 00
46	" girl Rachel	14		300 00
47	" boy Simon	9		300 00
48	" girl Betsey	5		200 00
49	" boy Jacob	3		200 00
50	" man Peter	33		450 00
51	" woman old Sarah	70		100 00
52	" man Lewis	33		450 00
53	" woman Nelly	30	Wife of Lewis	400 00
54	" boy Charles	9	Child of Lewis and Nelly	300 00
55	" girl Taneor	5	....do.....do.....do	200 00
56	" boy Henry	3	....do.....do.....do	150 00
57	" girl Sarah	1	....do.....do.....do	100 00
58	" man Parker	33		500 00
			Am't carried forward.	$24,850 00
			Am't brought forward.	24,850 00
59	" girl Eleanor	14		350 00
	Given by Mrs. Perkins to daughter Ann—			
60	Negro boy Jim	16		450 00
	Given by Mrs. Perkins to son Benjamin—			
	1 chest of old carpenter's tools, valued at			5 00
	4 mules			200 00
	The stock of cattle, supposed 60 head			200 00
	Amounting to twenty-six thousand and fifty-five dollars.			$26,055 00

In testimony whereof we, the said appraisers, have hereunto subscribed our names, in presence of the undersigned witnesses and the said judge, the day and year, and at the place aforesaid.

JOSEPH SMITH,
JAMES NOWLAN,
Appraisers.

Before me, ROBERT OGDEN,
Parish judge, &c.

Witnesses present—
E. JAMES SMITH,
MOSES MUNHOLLAND.

Estate of Mrs. Mary Perkins, deceased.

THE STATE OF LOUISIANA,
Parish of Concordia, ss.

Be it remembered, that, on the second day of March, in the year

of our Lord one thousand eight hundred twenty-seven, at Somerset plantation, the residence of the honorable John Perkins, in the parish aforesaid, upon his petition setting forth that he is about to present a final administrative account of the estate in his hands of Mrs. Mary Perkins, deceased, within the parish aforesaid, and to cause legal proceedings to be had to effect a judicial partition of the said estate among the heirs of the said deceased, I, Robert Ogden, judge of the parish aforesaid, [and] ex officio judge of probates in and for the said parish, proceeded to cause an inventory and appraisement to be made of the estate of the said deceased; and, for this purpose, I appointed and authorized Joseph Smith, esq., and James Nowlan, freeholders, and residents of the said parish, appraisers, to appraise and set a value on all and singular the said estate, who took and subscribed before me the oath by law in such cases prescribed, and the following is a just and true inventory and appraisement of all and singular the immoveables and moveable estate of the said deceased within the parish aforesaid, so far as the same were shown to us, or otherwise, after diligent inquiry, came to our knowledge, viz:

		Aged		
1	Negro man Cook	55	Valued at	$200 00
2	" woman Lucy, his wife	40		250 00
3	" woman Rose	22		400 00
4	" woman Selina	20		400 00
5	" boy Jack	16		350 00
6	" girl Susy	14	Child of Cook and Lucy	300 00
7	" boy Jim	12	do. do. do.	300 00
8	" boy Peter	10	do. do. do.	300 00
9	" man Caleb	24		500 00
10	" woman Abbey	35		350 00
11	" man George	17		400 00
12	" woman Rose	24		400 00
13	" boy Ephraim	4	Child of Rose	200 00
14	" girl Fanny	2½	do. do.	150 00
15	" girl Caroline	6 mos.	do. do.	50 00
16	" man big Abraham	21yrs.		200 00
17	" woman Judah	26		300 00
18	" woman black Maria	22		400 00
19	" woman yellow Maria	30		400 00
20	" man African John	34		25 00
21	" man Sam	19		400 00
	2 mules			50 00
	Amounting to six thousand three hundred and twenty-five dollars.			$6,325 00

In testimony whereof we, the said appraisers, have hereunto subscribed our names the day and year and at the place aforesaid, in presence of the undersigned, witnesses, and the said judge.

JOSEPH SMITH,
JAMES NOWLEN, *Appraisers.*

Before me, ROBERT OGDEN,
Parish judge, &c.

Witnesses present—
E. JAMES SMITH,
MOSES MUNHOLLAND.

Supplemental.

And the said James Nowlen, appraiser as aforesaid, and sworn as aforesaid, being called to appraise the negro boy Arthur, belonging to the same estate, and omitted in the inventory aforesaid, by reason of his being at the time of taking it absent in the State of Mississippi, doth declare and say, to the best of his knowledge and judgment, that the said negro is worth two hundred and fifty dollars.

JAMES NOWLEN.

I concur in the above. JOSEPH SMITH.

Before me. ROBERT OGDEN,
Parish judge, &c.

Witnesses present—
ANSON HANSBROUGH,
MARTIN W. EWING.

STATE OF LOUISIANA,
Parish of Concordia, ss.

Be it remembered, that on the twenty-ninth day of May, in the year of our Lord one thousand eight hundred and twenty-seven, at my office in the parish aforesaid, before me, the undersigned parish judge, and ex officio judge of probate and notary public, in and for the parish aforesaid, Joseph Smith and Pleasant A. Thacker, of the parish aforesaid, experts, duly commissioned and sworn to form and apportion the lots to effect a judicial partition of the estates, within the parish aforesaid, of Benjamin Bynum and Mary Perkins, deceased, made return to me of their proceedings in this behalf as follows, to wit, of the estate of Benjamin Bynum, deceased, to be divided between his four heirs, Mrs. Ann Ewing, Mary C. Bynum, Harriet J. Bynum, and Benjamin S. Bynum, they formed and apportioned the same into four lots as follows, viz., the lot No. 1 to consist of one undivided fourth part of one undivided half part of one thousand and forty acres of land, situated on Lake Concordia, in the parish aforesaid, on which the said Benjamin Bynum in his lifetime resided, viz., one hundred and thirty acres, valued in the inventory taken on the 2d day of March, 1827, at ten dollars per acre, and the following negroes valued as aforesaid, Judah Myers, aged 25 years, $400; Edward 4, $150; Harry, 7 months, $50; children of Judah Myers. Little Daniel, 16, $400; Patrick, 13, $350; Lewis, 5, $200; children of big Daniel. Big Daniel, 50, $250; big Sarah, $200; Miambo, 50, $200; Ned, 16, $400; Polly, 14, $300; Tom, 5, $200; children of Sally, deceased; also, 1 mule, $50; amounting in the whole to four thousand four hundred and fifty dollars.

2d. The lot No. 2 to consist of the like undivided portion of land, viz., one undivided portion of land, viz., one hundred and thirty acres as aforesaid, and the following negroes valued as aforesaid, viz., Billy, 33,

$300; Sucky, his wife, 33, $400; David, 9, $300; Moses, 7, $250; Lucy, 5, $200; Eleanor, 3, $150; Leah, 1, $100; children of Suckey. Milley, 37, $350; Abraham, 16, $200; child of Sally, deceased. Parker, 3, $130; Lucy, 51, $200; child of Frank. Parker, 33, $500; also, 1 mule, $50; amounting in all to four thousand four hundred and fifty dollars.

3d. The lot No. 3 to consist of the like undivided portion of land, viz., one hundred and thirty acres aforesaid, and the following negroes valued as aforesaid, viz., Will, 50, $300; Dinah, his wife, 33, $400; Dick, 16, $400; son of Simon. Robert, 3, son of Will, $130; Celia, 16, $400; daughter of Will. Nelly, 30, $400; Charles, 9, $300; Sam, 5, $200; Henry, 3, $150; Sarah, 1, $100; children of Nelly. Sarah, 80, $100; Peter, 33, $450; also, 1 mule, $50, and 15 head of cattle, $30; amounting in all to four thousand four hundred and fifty dollars.

4th. The lot No. 4 to consist of the like undivided portion of land, viz., one hundred and thirty acres as aforesaid, and the following negroes valued as aforesaid, viz., Judah Mooney, 25, $400; Caroline, 5, $200; Jane, 2, $150; children of Judah Mooney. Simon, 50, $200; Jane, his wife, 35, $350; Sally, 20, and her child, 1, (Jane,) $450; Rose, daughter of Will, 14, $300; Rachel, 10, $300; Simon, 9, $300; Betsy, 5, $200; Jacob, 3, $200; children of Simon. Also, 1 mule, $50, and 15 head of cattle, $50; amounting in all to four thousand four hundred and fifty dollars.

And of the estate of Mary Perkins, deceased, to be divided among her six heirs, viz., the four before named and John Perkins and William Perkins, her children by her last marriage, they, the said experts, formed and apportioned the same into six lots as follows, viz:

1st. The lot No. 1 to consist of an undivided sixth part of an undivided half part of the tract of land aforesaid, viz., eighty-six acres and four-sixths of an acre, and the following negroes, viz., Frank, 50, $200; Maria, his wife, 37, $300; Frank, 1, $100; Fanny, 7, $200; children of Frank. Samuel, 19, $400. Also, 1 mule, $25; 30 head of cattle, $100; amounting in all to the sum of two thousand one hundred and ninety-one dollars and sixty-six cents.

2d. The lot No. 2 to consist of the like undivided sixth part of an undivided half part of the tract of land aforesaid, viz., eighty-six acres and four-sixths of an acre, and the following negroes, viz., Cook, 55, $200; Lucy, his wife, 40, $250; Jim, 12, $300, child of Cook; Lewis, 33, $450; Anderson, 10, $250, child of Frank; amounting in all to two thousand three hundred and sixteen dollars and sixty-six cents.

3d. The lot No. 3 to consist of the like undivided sixth part of an undivided half part of the tract of land aforesaid, viz., eighty-six acres and four-sixths of an acre, and the following negroes, viz., Rose, 24, $400, wife of Peter; Ephraim, 4, $200; Fanny, 2½, $150; Caroline, 6 months, $50, children of Rose; Caleb, 24, $500; also, 1 mule, $25; amounting in all to two thousand one hundred and ninety-one dollars and sixty-six cents.

4th. The lot No. 4 to consist of the like undivided sixth part of an undivided half part of the tract of land aforesaid, viz., eighty-six acres and four-sixths of an acre, and the following negroes, viz., Alexander, 14, $350, child of Frank; China, 12, $250, child of Sally, deceased; Cilena, 20, $400, child of Lucy; Rose, 22, $400; amounting in all to two thousand two hundred and sixty-six dollars and sixty-six cents.

5th. The lot No. 5 to consist of the like undivided sixth part of an undivided half part of the tract of land aforesaid, viz., eighty-six acres and four-sixths of an acre, and the following negroes, viz., Abb, 35, $350; George, 17, $400; Jack, 16, $350, son of cook; Susy, 14, $300, daughter of cook; amounting in the whole to two thousand two hundred and sixty-six dollars and sixty-six cents.

6th. The lot No. 6 to consist of the like undivided sixth part of an undivided half part of the tract of land aforesaid, viz., eighty-six acres and four-sixths of an acre, and the following negroes, viz., Big Abraham, infirm, $200; Judah, 26, $300; Black Maria, 24, $400; Yellow Maria, 30, $400; African, $25; amounting in all to two thousand one hundred and ninety one dollars and sixty-six cents.

And the said lots apportioned as aforesaid in presence of John Perkins, curator ad bona and tutor respectively to the minor heirs, and of Martin W. Ewing, the husband of the said Mrs. Ann Ewing, and curator ad lites and under tutor of the said minors, respectively, and before the said judge and notary, were drawn by the said experts to the several minor heirs as follows, viz:

Of the estate of Benjamin Bynum, deceased.

The lot No. 1 to Mrs. Ann Ewing.
The lot No. 2 to Miss Harriet J. Bynum.
The lot No. 3 to Miss Mary C. Bynum.
The lot No. 4 to Benjamin S. Bynum.

And of the estate of Mary Perkin's deceased.

The lot No. 1 to Mrs. Ann Ewing.
The lot No. 2 to William Perkins.
The lot No. 3 to Benjamin S. Bynum.
The lot No. 4 to Harriet J. Bynum.
The lot No. 5 to John Perkins, jr.
The lot No. 6 to Mary C. Bynum.

In testimony whereof the said experts have hereunto subscribed their names, the day and year, and at the place aforesaid, in presence of the undersigned witnesses, and before me, the undersigned judge and notary public.

JOSEPH SMITH.
Plt. A. THACKER.

Witnesses—
GEO. S. GUION,
S. THOMINGTON.

Before me, with my seal of office.

ROBERT OGDEN,
Parish judge, &c., and notary public.

STATE OF LOUISIANA,
Parish of Concordia.

At a special court of probate, in and for said parish, this 29th , present, Robert Ogden, judge; George S. Guion, clerk. In the matter of the succession of Mrs. Mary Perkins, deceased, and Benjamin Bynum, deceased.

JOHN PERKINS, curator and tutor, &c., }
vs.
THE SAID SUCCESSION. }

Petition.

Appeared the said plaintiff, as curator ad bona and tutor, respectively, to the said minor heirs of the said succession, and Martin W. Ewing, representing his wife, Mrs. Ann Ewing, one of the heirs of the said succession, and as curator ad lite, and under tutor, respectively, to the said minors, and the foregoing return of the experts of the forming and drawing of the lots to effect a judicial partition of the estates therein mentioned being made, it is hereby ordered, adjudged, and decreed, that the same be allowed and confirmed, subject to whatsoever opposition may be made and sustained, as prescribed by law; the time within which such opposition may be received being, by consent of the parties aforesaid, extended to the 10th day of August next; after which, no opposition being made, the order and decree to be absolute. And it is hereupon ordered, adjudged, and decreed, subject as aforesaid, that the property mentioned in the several lots drawn as aforesaid, be and remain the property of the several heirs respectively, as in the said return set down as drawn to them respectively. The heirs who have drawn an excess to contribute their proportion in money to make the shares of all the heirs equal.

ROBERT OGDEN,
Judge of Probates.

Attest: GEORGE S. GUION,
Clerk.

STATE OF LOUISIANA, *parish of Concordia, ss.*

At a special court of probates, in and for the said parish, this 22d December, 1827, present, Robert Ogden, judge. In the matter of the succession of Mrs. Mary Perkins, deceased, and Benjamin Bynum, deceased.

JOHN PERKINS, curator and tutor, }
vs.
THE SAID SUCCESSION. }

Partition.

Appeared the said plaintiff, as curator ad bona and tutor, respectively,

of the minor heirs of the said succession, and Martin W. Ewing, representing his wife, Mrs. Ann Ewing, one of the heirs of the said succession, and as curator ad lite and under tutor, respectively, to the said minors; and no objection having been filed or offered to the partition adjudged on the 29th day of May last, and with the consent of the said parties on their own behalf, respectively, and on behalf of them they represent, it is hereby ordered, adjudged, and decreed, that the said partition be homologated and made final.

ROBERT OGDEN,
Judge of Probate.

Partition filed 29th May, 1827.

ROBERT OGDEN,
Parish Judge.

Homologation of do. filed 22d December, 1827.

ROBERT OGDEN,
Parish Judge.

STATE OF LOUISIANA, *parish of Concordia.*

I, Alvin S. Britton, deputy clerk of the probate court, in and for the parish of Concordia, State aforesaid, do hereby certify the foregoing to be a true transcript of the *of the* process verbal of family meeting, recommending curators ad bona and ad lite and tutors to the minor heirs of Benjamin Bynum, deceased; also inventories and appraisements on the 2d March, 1827; and also act of partition in the estates [of] Benjamin Bynum and Mrs. Mary Perkins, deceased, from page 1 to page 8, inclusive, from the original on file and of record in this office.

In testimony whereof I have hereunto set my hand, and the seal of said office, this 25th day of February, A. D. 1846.

ALVIN S. BRITTON,
Dep'y clerk said court.

Joint receipts and acquittances of Ewing and wife.

Received of John Perkins two negro slaves, Lewis and Anderson; also his draft on A. Fisk for four hundred and seventy dollars and thirty-four cents, at one hundred and ninety days, endorsed by R. M. Gaines, which, when paid, will be in full of all claims and demands of any kind and description which we or either of us may have against said Perkins individually, or against him as curator of the estates of Benjamin Bynum and Mary Perkins, in the parish of Concordia, State of Louisiana, or as executor of the will of the said Mary Perkins, dated March 30, 1822, and in full of all claims of every kind which we, or either of us, may have against said Perkins in any way whatever, we having received from said Perkins, heretofore, the following named slaves, to wit, Judah Myers, aged about 25 years; Edward, about 4 years;

Henry, about 7 months; Little Daniel, about 16 years; Patrick, 13 years; Lewis, 5 years; Big Daniel, 50 years; Big Sarah, years; Marimbo, about 50 years; Ned, 16 years; Polly, 14 years; Frank, about 50 years; Maria, his wife, 37 years old; Frank, about 1 year; Fanny, about 7; Samuel, about 19 years; also, two mules, 30 head of cattle, and a chest of tools; and the said Perkins accepts hereof, as a full satisfaction and discharge from the said Martin W. Ewing and Ann, his wife, in the premises.

Witness our hands this 11th day of April, A, D. 1828.

MARTIN W. EWING,
ANN EWING,
JOHN PERKINS,

Attest: R. M. GAINES.

STATE OF LOUISIANA,
Parish of Concordia.

Before me, the undersigned, judge in and for the parish aforesaid, personally appeared the undersigned, R. M. Gaines, of Adams county, Mississippi, and being duly sworn deposes and says, that he was present and saw the above named parties execute the foregoing instrument of writing as and for their respective acts, delivered for the purpose therein mentioned.

R. M. GAINES.

Sworn to and subscribed this 12th day of April, 1828, before me,
ROBERT OGDEN, *Judge.*

STATE OF LOUISIANA, *Parish of Concordia, ss.*

Recorded in book F, page 183. In testimony whereof I have hereunto set my hand and the seal of my office this 12th day of April, 1828.
[SEAL.] ROBERT OGDEN, *Parish judge, &c.*

To wit, receipt and release of Benjamin S. Bynum and Mary C. Bynum to John Perkins.

Know all men by these presents, that we, Benjamin S. Bynum, at present of the county of Claiborne, and State of Mississippi, and Mary C. Bynum, of the Briers, in the county of Adams and State aforesaid, two of the heirs and legal representatives of Benjamin Bynum, late of the parish of Concordia and State of Louisiana, deceased, and Mrs. Mary Perkins, late of the Briers, in the county and State aforesaid, but formerly of the parish of Concordia and State of Louisiana aforesaid, also deceased, have, on this day, and at previous dates, heretofore received from our step-father and guardian, John Perkins, all and each of our respective estates or shares arising to us, or growing out of, either and both of said successions in law or equity. In consideration whereof we, the said Benjamin S. Bynum and Mary C. Bynum,

jointly and severally, for ourselves, and heirs, and assigns, do, by these presents forever release and discharge him, the said John Perkins and his heirs, from all claims and demands whatsoever, at law or equity.

In testimony whereof we have hereunto set our hands this 10th day of April, in the year of our Lord one thousand eight hundred and twenty-nine; and the said John Perkins being present, accepting by these presents, who, on the day and year above written, has also hereunto set his hand.

BENJAMIN S. BYNUM,
MARY C. BYNUM,
JOHN PERKINS.

Done in presence of—
JOHN P. FURNISS,
JOHN D. SMITH.

The STATE OF LOUISIANA,
Parish of Concordia, ss.

Before me, George S. Guion, judge of the said parish, personally came and appeared John P. Furniss, of Adams county, State of Mississippi, and being duly sworn, he declares and says, that he was present and did see the above mentioned Benjamin S. Bynum, Mary C. Bynum, and John Perkins, sign and execute the foregoing instrument of writing on the day therein mentioned, for the uses therein expressed; and that he, this deponent, and John D. Smith, signed their names thereto as witnesses on attestation thereof.

JOHN P. FURNISS.

Sworn to and subscribed this 30th May, 1829.
GEORGE S. GUION, *Par. judge.*

STATE OF LOUISIANA,
Parish of Concordia, ss.

I certify, that the foregoing deed has this day been duly recorded in my office, in book E, pages 360, 361.

In testimony whereof I do hereunto set my hand and the seal of my office, this 2d of June, A. D. 1829.

[SEAL.] GEORGE S. GUION, *Par. judge.*

Authentic act of confirmation passed before parish judge of Concordia, by M. C. Eskridge and Thomas P. Eskridge, April 9, 1832.

Be it remembered, that on this ninth day of April, A. D. 1832, before me, George S. Guion, judge and ex officio notary public in and for the said parish, and in presence of the witnesses herein after named and undersigned, personally came and appeared Mary C. Bynum, wife of Thomas P. Eskridge, of Arkansas Territory, duly authorized and assisted herein by her said husband, who declared and acknow-

ledged that she had received from her step-father and curator ad bona, John Perkins, of Adams county, in the State of Mississippi, her full, entire, and legal share, or portion, of the succession respectively of her late father, Benjamin Bynum, formerly of the parish aforesaid, deceased, and her late mother, Mrs. Mary Perkins, formerly of said parish, and lately of the said county of Adams and State of Mississippi, which devolved upon her, the said appearer, as one of the legal heirs of the two said successions. And therefore, in consideration of the premises, she, the said Mrs. Mary C. Eskridge, authorized and assisted by her said husband, here present, does by these presents release and forever discharge the said John Perkins, his heirs, executors, and administrators, from all claims and demands whatsoever in relation to the said successions, or either of them; and the said John Perkins, being present, declares his acceptance of this act.

Done and passed at my office, in the town of Vidalia, the day and year aforesaid, in presence of Edmund P. Pollard and Edward Sparrow, witnesses residing in the parish, who have signed this act with the parties and me, the said judge and notary.

M. C. ESKRIDGE.
THOMAS P. ESKRIDGE.

EDMUND P. POLLARD,
EDWARD SPARROW.

GEORGE S. GUION,
P. Judge.

STATE OF LOUISIANA,
Parish of Concordia, ss.

I, George J. Guion, judge of the said parish, certify the foregoing to be a true copy, taken from the original act of record in my office.

In testimony whereof I have hereunto set my hand and the seal of my office, at Vidalia, this 26th day of May, 1834.

[SEAL.] GEORGE S. GUION,
P. Judge.

Joint receipt and acquittance of E. P. Fourniquet and wife to John Perkins.

Received, Natchez, May 27th, 1834, of John Perkins, on settlement of all accounts, debts, dues, and demands whatsoever, up to the present day, one hundred dollars in full, having on a previous occasion received from him, as the guardian of my wife, Mrs. Harriet J. Fourniquet, late Miss Bynum, all the estate, portion, and share which she inherited by the death of her late father, Benjamin Bynum, late of Concordia, Louisiana, deceased, or her mother, Mrs. Mary Perkins, of the county of Adams and State of Mississippi, and brother Benjamin S. Bynum, of the county of Claiborne and State last aforesaid, deceased; and do by these presents, jointly with my said wife, release and forever discharge the said Perkins from all and every claim which she,

or either of us, might or could have against him, the said Perkins, either as guardian or otherwise, growing out of the estate aforesaid, or in any other manner or shape whatever, and forever exonerate him by these presents, his heirs, executors, and administrators, therefrom.

In witness whereof we have hereunto set our hands and seals the day and year first above written, to wit, in the year of our Lord one thousand eight hundred and thirty-four, in the presence of Elijah Bell and John C. Maddux, whose names are hereunto subscribed as witnesses hereunto, the said John Perkins being also personally present, and by these presents accepting.

E. P. FOURNIQUET, [L. S.]
HARRIET J. FOURNIQUET, [L. S.]
JOHN PERKINS. [L. S.]

Witness of—
Signed, sealed, and delivered in presence of—
ELIJAH BELL,
JNO. E. MADDUX.

STATE OF MISSISSIPPI,
Adams county.

Personally before me, Woodson Wren, a justice of the peace for the county of Adams, appeared E. P. Fourniquet and Harriet J. Fourniquet, his wife, and John Perkins, whose names are subscribed to the foregoing instrument, and acknowledged that they signed, sealed, and delivered the same as their act and deed, on the day and for the uses and purposes therein mentioned.

Given under my hand and seal, this 28th May, 1834.

WOODSON WREN, *J. P.* [L. S.]

STATE OF MISSISSIPPI,
Adams county.

I, Fleming Wood, clerk of the probate court for the county aforesaid, do hereby certify, that Woodson Wren, whose proper signature is subscribed to the above acknowledgment, is, and was at the time of his subscribing the same, a justice of the peace in and for said county, duly elected, commissioned, and qualified as such, and that all his acts as justice of the peace are entitled to full faith and credit.

Witness my hand and official seal, this 28th day of May, 1834.

[SEAL.] F. WOOD, *Clerk.*

THE STATE OF MISSISSIPPI,
Claiborne county.

I, Lucas Gee, clerk of the probate court in and for the county and State aforesaid, do hereby certify the within release from E. P. Fourniquet and wife to John Perkins *are* duly recorded in my office, in book "N," No. 13, pages 566, 567.

Given under my hand, at the town of Port Gibson, this 31st day of May, 1834.

LUCAS GEE, *Clerk*,
By WM. GEO. KINNAUD, *D. C.*

STATE OF LOUISIANA,
Parish of Concordia, ss.

I, George W. Keeton, judge of the said parish, duly commissioned and qualified, do hereby certify and attest, unto all whom it doth or may concern, that Harriet J. Bynum, wife of Edward P. Fourniquet, and Edward P. Forniquet and John Perkins, personally appeared before me, and acknowledged that they signed and sealed the foregoing instrument of writing, as and for their purpose, act, and deed; to the due execution thereof, an act being requited the same under my seal of office to serve, and as occasion may require.

Done and passed at my office in the town of Vidalia, on the 30th day of January, A. D. 1837.

[SEAL.] G. W. KEETON, *Parish Judge.*

STATE OF LOUISIANA,
Parish of Concordia, ss.

I certify the within instrument of writing to be duly recorded in my office in book "H," at pages 21 and 22.

In testimony whereof I have hereunto set my hand and the seal of office at Vidalia this 30th January, A. D. 1837.

[SEAL.] G. W. KEETON, *P. Judge.*

Deed of conveyance of Benjamin S. Bynum and Mary C. Bynum to John Perkins.

This indenture, made this first day of April, in the year of our Lord one thousand eight hundred and twenty-nine, between Benjamin S. Bynum, at present of the county of Claiborne, and State of Mississippi, and Mary C. Bynum, his sister, of the Briers near Natchez, in the county of Adams, and State aforesaid, two of the heirs and legal representatives of the estate of the late Benjamin Bynum, of the parish of Concordia, Louisiana, deceased, of the first part, and John Perkins, of the Briers, in the county and State aforesaid, of the second part, witnesseth: That for and in consideration of the sum of one thousand dollars by the said party of the second part to the said party of the first part in hand paid before the sealing and delivery of these presents, the receipt of which the said party of the first part do hereby acknowledge, and themselves to be therewith fully paid and satisfied, the said party of the first part hath bargained, and sold, alien, and enfeoffed, and by these presents doth give, grant, bargain, and sell, alien, enfeoff, release, convey, and confirm, unto the said party of the second part, his heirs and assigns, all the estate, right, title, interest, claim, and demand, in and to a certain undivided tract of land situated, lying, and

being in the parish of Concordia, and State of Louisiana, on Lake Concordia, adjoining lands on one side of William Blunt, esq., and lands on the other belonging to the heirs of the late Philip Hill, deceased, containing one thousand and forty acres, be the same more or less; which said undivided interest and claim of land amounts to one-half of the aforesaid tract of land situated as aforesaid, which the said party of the first part conveys and confirms unto the said party of the second part, his heirs and assigns, together with all and singular the buildings, improvements, ways, water-courses, rights, members, priviledges, advantages, and appurtenances thereunto belonging, unto the said party of the second part, his heirs and assigns, to the only proper use of the said party of the second part, his heirs and assigns, forever.

In testimony whereof the parties aforesaid have hereunto set their hands and affixed their seals, the day and year first above written, one granting, and the other at the same (time) accepting by these presents.

BENJAMIN S. BYNUM, [L. S.]
MARY C. BYNUM, [L. S.]
JOHN PERKINS. [L. S.]

Signed, sealed, and delivered in presence of—
JOHN P. FURNISS,
JNO. D. SMITH.

THE STATE OF LOUISIANA,
Parish of Concordia, ss.

Before me, George I. Guion, judge of the said parish, personally came and appeared John P. Furniss, of Adams county, State of Mississippi, and being duly sworn, he declares and says, that he was present, and did see Benjamin S. Bynum, Mary C. Bynum, and John Perkins execute the foregoing instrument of writing the day and year therein mentioned, and that he, the deponent, and John D. Smith signed their names thereto as witnesses in attestation thereof.

JOHN P. FURNISS.

Sworn to and subscribed, this 30th May, 1829.
GEORGE S. GUION, *P. J.*

STATE OF LOUISIANA,
Parish of Concordia, ss.

I certify, that the foregoing deed has this day been duly recorded in my office in book E, at pages 361, 362.

In testimony whereof I do hereunto set my hand and the seal of my office this 2d of June, A. D. 1829.
[SEAL.]
GEORGE S. GUION, *P. J.*

Deed of conveyance from John Perkins to Benjamin S. Bynum.

This indenture, made and entered into this first day of May, in the

year of our Lord one thousand eight hundred and twenty-nine, between John Perkins, of the county of Adams, and State of Mississippi, of the one part, and Benjamin S. Bynum, of the county of Claiborne, State aforesaid, step-son to me, the said John Perkins, of the second part, witnesseth: That the said party of the first part, for and in consideration of the natural love and affection which he hath for the said party of the second part, and other good and sufficient causes and considerations him hereunto moving, hath given, granted, aliened, released, and confirmed, unto the said party of the second part, his heirs and assigns, all that plantation called the "Long Branch," being that tract or parcel of land situated in the county of Claiborne, and State of Mississippi, on the bayou Pierre, and bounded as follows, to wit, on the north by the lands of Wm. R. McAlpin, on the west by lands owned by John G. Singleton, and the party of the first part, on the south by the bayou Pierre, and on the east by lands unknown, being part of the lower half of Lyman's mandamus, and purchased by the said party of the first part from John Patterson and wife, and Richard Grimes and wife, and more particularly described in a survey made by William Davis, dated February 23d, 1829, and hereunto annexed, containing by estimation nine hundred and twenty-four acres, be the same more or less: To have and to hold the above described tract and parcel of land, together with all and singular the privileges and appurtenances thereunto belonging, unto the said party of the second part, his heirs and assigns, to the only proper use and behoof of him and them forever: Provided, always, notwithstanding, nevertheless, and upon the following conditions, to wit: That in case the said party of the second part shall die without lawful issue, this deed shall operate as a conveyance of the premises herein described to Mary C. Bynum and Harriet J. Bynum, sisters of the said Benjamin S. Bynum, and to their children, to the exclusion of all others; and if the said Mary and Harriet shall also die without issue, then to John and William Perkins, the sons of the party of the first part; and provided, also, that if the said party of the second part, from any misapprehension or with any view whatever, should be induced to prefer any claims against the said party of the first part, for any matter or thing whatsoever up to or previous to this time, then this deed shall be void; and it is further understood and provided, that if the said party of the second part wishes to sell or dispose of the said tract of land, he shall have full power and authority to do so, provided he vests the purchase money in other real estate, subject to the foregoing conditions and provisions; and the said party of the first part, for himself, his heirs, &c., the said tract of land and premises, with the appurtenances thereunto belonging, unto the said party of the second part, his heirs and assigns, (subject to the foregoing conditions, limitations, and provisions,) against himself, and all persons claiming by, through, or under him, will warrant and forever defend, but against the claim or claims of no other person whatsoever.

In testimony whereof the said John Perkins hereto set his hand and affixed his seal the day and year first above written.

JOHN PERKINS. [L. S.]

In the presence of—
JOSEPH SMITH,
JAMES NOULAN.

[For plat, see original, p. 103.]

STATE OF MISSISSIPPI,
Claiborne county, ss.

I, William Davis, county surveyor of the county aforesaid, do certify, that I have surveyed for John Perkins, esq., in the Lyman mandamus, a tract of land containing nine hundred and twenty-four superficial acres, which survey the foregoing plat truly represents.

Given under my hand at Port Gibson, this 23d day of February, A. D. 1829.

WM. DAVIS, *C. surveyor.*

STATE OF MISSISSIPPI,
Adams county.

John Perkins personally appeared before the undersigned, justice of the peace in and for the said county, and acknowleged that he signed, sealed, and delivered the annexed instrument for the purposes therein mentioned.

Witness my hand and seal this 28th May, 1829.

JAMES CARSON, *J. P.*

Received for record June 8th, 1829, and duly recorded.

WM. DAVIS, *Clerk.*

THE STATE OF MISSISSIPPI,
County of Claiborne, ss.

I, Frederick J. Poor, clerk of the probate court in and for said county, do hereby certify, that the foregoing transcript contains a true copy of a deed from John Perkins to Benjamin S. Bynum, as the same appears of record in my office, in book K, pages 444, 445, 446, and 447.

Given under my hand and seal of office at Port Gibson, this 23d day of November, A. D. 1844.

[SEAL.]

FRED'K J. POOR, *Clerk.*

STATE OF MISSISSIPPI,
County of Claiborne.

I, William M. Randolph, judge of the probate court of the county of Claiborne, in the State of Mississippi, do certify, that the annexed certificate and attestation by Fred. J. Poor, who is the clerk of the said court, *and* in due form of law.

Given under my hand and seal this 24th day of November, A. D. 1844.

WM. M. RANDOLPH, [SEAL.]
Judge of probate court, Claiborne county, Mississippi.

THE STATE OF MISSISSIPPI,
County of Claiborne, ss.

I, Frederick J. Poor, clerk of the probate court in and for said county, do hereby certify, that William M. Randolph, whose name is signed to the certificate above written, is and was at the time of signing the same, judge of the probate court aforesaid, duly commissioned and qualified according to law, and that full faith and credit are and ought to be given to his official acts as such.

Given under my hand and seal of office at Port Gibson, this 25th day of November, A. D. 1844.
[L. S.]

FRED'K J. POOR, *Clerk.*

Deed of conveyance from John Perkins to Mary C. Bynum.

This indenture, made the first day of May, in the year of our Lord one thousand eight hundred and twenty-nine, between John Perkins, of the county of Adams, and State of Mississippi, of the one part, and Mary C. Bynum, step-daughter of the said John Perkins, of the second part, witnesseth: That the said party of the first part, for and in consideration of the natural love and affection which he hath to the said Mary C. Bynum, and other good and sufficient causes and considerations him thereunto moving, hath given, granted, aliened, released, and confirmed, and by these presents doth give, grant, alien, release, and confirm, unto the said party of the second part, her heirs and assigns, all that tract or parcel of land situated in the county of Claiborne and State aforesaid, on the bayou Pierre, in the lower half of what is called Lyman mandamus, being six-eighths of an undivided tract of one thousand acres, devised by John Hartley to his wife, and by her to her eight grand children, six shares of which the said party of the first part holds by purchase from John Patterson and wife, and James Barland and wife, and which will more fully appear by reference to the records of Claiborne county, the said tract being the same heretofore known and commonly called the "grandmother" or island "tract," and was called, by the grantor, "Mount Airy," and contains about seven hundred and fifty acres, more or less. To have and to hold the above described tract or parcel of land, together with all and singular the privil-

eges and appurtenances thereunto belonging, unto the said party of the second part, her heirs and assigns, to the only proper use and behoof of her and them forever. Provided always, nevertheless, notwithstanding, and upon the following conditions, to wit: That in case the said party of the second part shall die without issue, this deed of conveyance shall operate as a conveyance of the premises herein described to Benjamin S. Bynum and Harriet J. Bynum, brother and sister of the said Mary, and their children, to the exclusion of all others; and if the said Benjamin and Harriet shall also die without issue, then to John and William Perkins, the sons of the party of the first part; and provided, also, that if the said party of the second part, from any misapprehension or with any view whatsoever, shall be induced to prefer any claims against the said party of the first part, for any matter or thing whatsoever, up to or previous to this time, then this deed of conveyance shall be void; and it is further understood and provided, that if the said party of the second (part) wishes at any time to sell or dispose of the said tract or parcel of land, she shall have full power and authority so to do, provided she vests the purchase money in other real estate, subject to the foregoing conditions and limitations; and the said party of the first part, for himself, his heirs, &c., the said tract of land and premises, with the appurtenances thereunto belonging, and all right, title, and interest in the same, unto the said party of the second part, her heirs and assigns, (subject to the foregoing conditions, limitations, and provisoes,) against himself and all (persons) claiming, by, through, or under him, will warrant and forever defend, but against the claim or claims of no other persons whatever.

In testimony whereof the said John Perkins hath hereunto set his hand and affixed his seal, the day and year first above written.

JOHN PERKINS. [L. S.]

Signed, sealed, and delivered in presence of—
JOSEPH SMITH,
JAMES NOULEN.

THE STATE OF MISSISSIPPI,
Adams county.

John Perkins personally appeared before the undersigned, justice of the peace in and for said county, and acknowledged that he signed, sealed, and delivered the annexed instrument for the purposes therein mentioned.

Witness my hand and seal, this 28th May, 1829.

JAMES CARSON, *J. P.*

Received for record, June 8th, 1829, and truly recorded.

WM. HARRIS, *Clerk.*

THE STATE OF MISSISSPPI,
Claiborne county, ss.

I, John Witherall, clerk of the probate court in and for the said county, do hereby certify, that the foregoing transcript contains a true copy of the deed from John Perkins to Mary C. Bynum, as the same appears of record in my office, recorded in book "K," pages 442, 443, and 444.

Given under my hand and seal of office, this 14th day of January, A. D. 1839.

JOHN WITHERELL, *Clerk*,
By J. L. WESTON, *Deputy Clerk*.

Deed of conveyance from John Perkins to E. P. Fourniquet.

Know all men by these presents, that I, John Perkins, late of the county of Adams and State of Mississippi, now of the parish of Concordia, Louisiana, for and in consideration of the love and regard I have for my step-daughter, Mrs. Harriet J. Fourniquet, late Harriet J. Bynum, as well as for the further consideration of the sum of one dollar to me in hand paid by Mr. Edward P. Fourniquet, the husband of my step-daughter, the receipt whereof I hereby acknowledge, have remised, released, and by these presents, for myself and my heirs, do remise, release, and forever quit claim, unto the said Edward P. Fourniquet, his heirs and assigns, forever, all the right, title, interest, property, estate, and demand which I, the said John Perkins, have in and to a certain piece or parcel of land lying and being in the county of Claiborne and State of Mississippi, in what is usually called Lyman mandamus, being a part of the undivided interest purchased by the said John Perkins of a certain John Burnham, his wife , late Hartley, which they had in and to a certain tract of one thousand acres, originally belonging to John Hartley, jun., deceased, adjoining lands of the late B. S. Bynum, deceased. To have and to hold the said premises, with all the privileges and appurtenances, unto him, the said Edward P. Fourniquet, his heirs and assigns, forever; so that neither I, the said John Perkins, nor any other person or persons in my name or behalf, shall or will hereafter claim or demand any right or title to the premises aforesaid, or any part thereof, but they and every (of) them shall by these presents be excluded and forever barred. And Mrs. Zelphia Perkins, wife of the said John Perkins, in her own right by these presents, hereby relinquishes all her right, title, interest, claim, and demand whatever.

In witness whereof they have hereunto set their hands and seals, this twenty-fifth day of December, in the year of our Lord one thousand eight hundred and thirty-three.

JOHN PERKINS, [L. S.]
Z. PERKINS. [L. S.]

Acknowledged in presence of—

STATE OF MISSISSIPPI, *Adams county.*

Personally appeared before me, William B. Melville, a justice of the peace in and for said county, the above named Zelphia Perkins, wife of the above named John Perkins, who, being examined separate and apart from her husband, acknowledged that she signed, sealed, and delivered the foregoing deed of gift on the day and year above mentioned as her voluntary act and deed, without any fear, threats, or compulsion of her husband, whereby she relinquishes her right and title to the premises herein mentioned.

Given under my hand and seal, at the city of Natchez, this 24th day of March, A. D. 1834.

WM. B. MELVIN, *J. P.* [L. S.]

STATE OF MISSISSIPPI, *Claiborne county.*

John Perkins, whose name is subscribed to the within deed of gift, came personally before the undersigned, justice of the peace in and for said county, and acknowledged that he signed, sealed, and delivered the within deed of gift on the day therein mentioned, and for the purpose expressed as his voluntary act and deed.

Given under my hand and seal, this 17th day of May, 1834.

JAMES H. MAUNY, *J. P.* [L. S.]

Received for record 17th May, 1834, and truly recorded.

LUCAS GEE, *Clerk.*

STATE OF MISSISSIPPI, *Claiborne county.*

John Wetherell, clerk of the probate court in and for Claiborne county, does certify, that the foregoing transcript (is) a true copy of the deed from John Perkins to Edward P. Fourniquet, as the same appears of record in my office, recorded in book "N," pages 526, 527, and 528.

Given under my hand and seal of office, this the 14th day of January, A. D. 1839.

JOHN WETHERELL, *Clerk,*
By J. L. WESTON, *Dy. Clerk.*

United States of America, circuit court, fifth circuit, district of Louisiana.

I, Edmund Randolph, clerk of said court, do hereby certify the foregoing to be a true copy of the answer on file in my office, in the case of Fourniquet and Ewing and Wife vs. John Perkins.

Given under my hand and seal of said court, at my office in New Orleans, this 4th day of November, A. D. 1848.

E. RANDOLPH, *Clerk,*
JAS. M. DOWNS, *D. C.*

United States of America, circuit court of the United States, for the fifth circuit and district of Louisiana.

I, Theodore H. McCaleb, United States judge for the district of Louisiana, do hereby certify, that Edmund Randolph, whose name is signed to the above certificate as clerk of the circuit court of the United States for the district of Louisiana, was at the time of signing said certificate, and is now, the clerk of said court. That said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

I further certify, that James M. Downs, who signed said Edmund Randolph's name as clerk, was, at the time of signing the same, the duly appointed and qualified deputy clerk of said Edmund Randolph.

Given under my hand and seal, at New Orleans, in the district of Louisiana, this 4th day of November, A. D. 1848.

THEO. H. McCALEB,
U. S. Judge.

Agreement of counsel.

Admitted in evidence by consent on 158 and 159.

JOHN HENDERSON,
H. S. EUSTIS.

See answer to 26th interrogatory. Bill herein referred to to show charge of purchase of 2100 acres of land from Elihu Hall Bay, lying in Claiborne county.

Above mentioned answer referred to for proof of said purchase of Bay's title for $5,000. Answer to 27th interrogatory.

Bill herein referred to charge of purchase of 500 acres of land from Sugars Turner for $1,000, on 17th March, 1824. Answer above mentioned referred to for proof of said purchase; answer to 28th interrogatory.

Charge in bill referred to of purchase of property in Natchez, on 3d March, 1823, for $600. Deed from Parker and wife to show amount paid, $600. Defendant in answer admits having paid only $200 for same.

"Deed from W. S. Parker and wife to John Perkins."

This indenture, made the third day of March, in the year of our Lord one thousand eight hundred and twenty-three, between Walter Smith Parker and Elizabeth H. Parker, his wife, of the parish of Concordia, in the State of Louisiana, of the one part, and John Perkins, of Adams county, in the State of Mississippi, of the other part, witnesseth: That the said Walter S. Parker and Elizabeth H. Parker, his wife, for and in consideration of the sum of six hundred dollars, to them in hand paid at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said

John Perkins, his heirs and assigns, forever released and discharged therefrom, have granted, bargained, sold, assigned, and set over, unto the said John Perkins, and by these presents do grant, bargain, sell, assign, and set over, unto the said John Perkins, his heirs and assigns, all that lot or parcel of land situate, lying, and being the south corner of Fourth Cross street and Third South street, in the city of Natchez, State of Mississippi, and bounded as follows, to wit, beginning at the corner of the said Fourth Cross and Third South streets; thence running on and bounded by Fourth Cross street one hundred feet; thence at right angles, or in such a direction as will make the rear line the same length as the front to the back line of the parcel of land of which this is a part, agreeably to a plat of survey annexed to the deed of conveyance from Mary Gerault, executrix of the last will and testament of John Gerault, deceased, dated the ninth day of May, in the year of our Lord one thousand eight hundred and seventeen, and recorded with the plat in book II, record of deeds, folio 334, and described in said survey as land belonging to John Girault, sold to M. Wooley, esq.; thence running and bounded by this last mentioned line towards Third South street to the end of said back line on the plat; thence continuing on the same course through other lands of the former grantor to Third South street; thence and bounded by Third South street to the place of beginning; to have a front on Fourth Cross street of one hundred feet, with a depth of not less than forty feet, as guarantied by the former grantor, and all the right, title, and claim which these grantors have to any quantity in depth over and above forty feet, if any, which may be contained between the front and back lines, as pr. the before described plat, whereby conveyed with a front on Third South street equal to the whole depth; it being the same lot or parcel of land which was conveyed to the said Walter H. Parker by Meeling Wooley, esq., by deed of indenture bearing date the third day of June, in the year of our Lord eighteen hundred and twenty-two, and particularly described in a plat of survey made by George Dougherty, esq., surveyor of Adams county, dated the 5th day of June, 1822, and which for greater certainty is hereunto annexed.

To have and to hold all and singular the estate, right, title, and interest, and demand of the said Walter S. Parker and wife of, in, and to the before mentioned and described lot or parcel of land, and every part thereof, unto the said John Perkins, his heirs and assigns forever; and the said Walter S. Parker and wife, the before mentioned and described lot or parcel of land unto the said John Perkins, against the claim or claims of all and every person claiming or to claim by, from, or under or in trust for them, shall and will warrant, and by these presents forever defend, but without further warranty or guaranty.

In witness whereof the said Walter S. Parker and Elizabeth H. Parker, his wife, have hereunto set their hands and seals, the day and year first above written.

W. S. PARKER, [L. S.]
E. H. PARKER. [L. S.]

Signed, sealed, and delivered in presence of—
H. O. MELLEN,
WILLIAM M. HUDSON.

[For copy of plat, see original.]

At the request of Meeling Wooley, esq., I have surveyed and laid out for Mr. W. S. Parker a lot of land in the city of Natchez, bounded as represented in the above plot.

GEORGE DOUGHTY,
Surveyor of Adams county.

JUNE 5, 1822.

STATE OF MISSISSIPPI, *Adams county.*

The within named W. S. Parker personally appeared before me, the undersigned, judge of probate in and for said county, and acknowledged he signed, sealed, and delivered the within instrument on the day and date mentioned for the uses and purposes therein expressed. And the said E. H. Parker, being by me examined separate and apart from her said husband, acknowledged that she signed and sealed the same with her own free will and consent, without any threat or compulsion from her said husband whatsoever.

Given under my hand and seal, this twelfth day of June, 1824.

JOHN RICHARDS.

I certify that the within deed was received into my office to be recorded on the 9th day of November, 1824.

WOODSON WREN, *Clerk.*

THE STATE OF MISSISSIPPI, *Adams county.*

[L. S.] I, Richard A. Inge, clerk of the probate court of said county, do hereby certify, that the above and foregoing is a true, perfect, and complete transcript of the original, as the same remains of record in my office. Given under my hand and seal of said court, this 5th day of October, A. D. 1849.

RICHARD A. INGE, *Clerk.*

4. Transcript from probate court of Adams county, Mississippi, showing sale of part of "Brier's" property, 50 acres, together with house, &c., from Perkins and wife to John Watt, for $10,000.

Copy of transcript

John Perkins and wife to John Watt.

This indenture, made this fifteenth day of June, in the year of our Lord one thousand eight hundred and thirty-three, between John Per-

kins and Zelphia Perkins, his wife, of the county of Adams, and State of Mississippi, of the one part; and John Watt, of the city of Natchez, and State aforesaid, of the other part, witnesseth:

That the said parties of the first part, for and in consideration of ten thousand dollars, to them in hand paid by the said John Watt, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said John Watt, and his heirs, executors, and administrators, forever release and discharge therefrom by these presents, have granted, bargained, sold, conveyed, and confirmed, and by these presents do grant, bargain, sell, convey, and confirm, unto the said John Watt, and his heirs and assigns, forever, all that certain tract or parcel of land, situate, lying, and being in the county of Adams and State of Mississippi, about one mile below the old Spanish fort Panmure, in the city of Natchez, containing fifty acres, being part of a tract of ninety-nine $\frac{26}{100}$ acres, conveyed to the said John Perkins by Arthur Mahon and wife, by deed bearing date the 30th day of October, in the year of our Lord one thousand eight hundred and eighteen, and particularly described in a plat and survey, signed C. C. Stone, deputy surveyor, hereunto annexed. The said fifty acres to be bounded as follows, to wit: Beginning at a post on Green or Andrews' line, at the end of the upper or northern line of said tract from the river; thence to the elm described in said plat, as marked XXIII, reversing the description from the said post; thence along the channel of the bayou described in said deed (as making out from the Mississippi) to the mouth of the first large bayou or gully from the river which makes out of the said bayou described in the said deed of Mahon and wife; thence up the said bayou or gully, and to intersect the upper or northern line of said tract of $99\frac{26}{100}$ acres, so as to include the quantity of fifty acres hereby intended to be conveyed, and to include the dwelling-house, kitchen, stables, and all other out-buildings attached to the residence of the parties of the first part, called the "Briers;" together with all and singular the appurtenances, hereditaments, privileges, and advantages whatsoever unto the above described premises belong[ing] or in any wise appertaining; and also all the estate, right, title, interest, and property and claim whatsoever, either at law or in equity, of them, the said parties of the first part, of, in, and to the same.

To have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said John Watt, and his heirs and assigns, forever; and the said parties of the first part, for themselves and for their heirs, executors, and administrators, do covenant, grant, promise, and agree, to and with the said John Watt, and his heirs and assigns, that they, the said parties of the first part, and their heirs, the above described and hereby granted premises, and every part thereof, with the appurtenances, unto the said John Watt, and his heirs and assigns, and against the said parties of the first part, and against all persons lawfully and equitably claiming or to claim said premises, or any part thereof, shall and will warrant, and by these presents forever defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year above written.

JOHN PERKINS, [SEAL.]
ZILPHA PERKINS. [SEAL.]

Signed, sealed, and delivered, in presence of—
JAMES CARSON,
JOHN PERKINS.

STATE OF MISSISSIPPI, *Adams county, ss.*

Personally appeared before the undersigned, justice of the peace in and for the county aforesaid, John Perkins and Zilpha Perkins, and acknowledged that they signed, sealed, and delivered the within as their act and deed, for the purposes therein mentioned. And the said Zilpha Perkins, being examined by me privately and apart from her said husband, acknowledged that she signed, sealed, and delivered the same as her voluntary act and deed, freely, without any fear, threat, or compulsion of her said husband.

Given under my hand and seal, this 17th day of June, A. D. 1833.

JAMES CARSON, *J. P.* [SEAL.]

Surveyed for M. P. Mahon, a certain tract of land, bounded on the Mississippi, about one mile below the city of Natchez, as follows:

Beginning at a cotton wood on the bank of the river below the mouth of a small bayou, and run up the bayou in the middle of the channel, courses and distances as follows: East 4 c. 50 l., N. 60 E. 3 50, S. 55 E. 3 74, N. 70 E. 1 50, S. 55 E. 2 42, N. 82 E. 2 16, S. 75 E. 4 23, N. 73 E. 1 00, N. 60 E. 1 72, N. 77 E. 1 15, N. 55 E. 0 50, East 1 50, N. 60 E. 2 91, N. 72 E. 2 00, N. 55 E. 1 50, S. 84 E. 3 50, N. 82 E. 1 00, N. 66 E. 0 88, S. 68 E. 1 45, N. 88 E. 1 00, S. 61 E. 1 00, S. 15 E. 1 00, S. 31 E. 4 21, S. 24 E. 4 54; leave the bayou on the left, set a stake from which a white oak bears S. 6 E. 10 links, and a white oak bears N. 6 W. 8 links; thence north 65 E. 1 69 to an elm corner on Green's line, marked XXIII; thence north 1° 45′ W. with Green's line 29 75 to stake; thence N. 70, W. 22 29 to a stake on the bank of the Mississippi river; thence down the river S. 89 W. 2 50, S. 40 W. 10 00, S. 25 W. 7, S. 40 W. 7 00, S. 25 W. 10 77, S. 45 W. 3 46 to the cotton wood, the place of beginning, containing, by mathematical calculation, ninety-nine acres and twenty-six hundredths of an acre.

[For map, see original, page 152.]

THE STATE OF MISSISSIPPI,
Adams county.

I, Richard A. Inge, clerk of the probate court of said county, do

hereby certify, that the within and foregoing copy of a deed and plat are correct transcripts from the records in my office. See book "U," pages 193, 194, and 195.

Given under my hand and seal of said court, this 5th day [L. S.] of October, A. D. 1849.

RICHARD A. INGE,
Clerk.

Deed from Perkins and wife to George Lake, dated 7th March, 1822, for a portion of the "Elihu Hall Bay" tract, in Claiborne county, 600 acres, for the sum of $5,000.

Deed from John Perkins et ux. to George Lake.

John Perkins et ux. to George Lake.

This indenture, made this seventh day of March, in the year of our Lord one thousand eight hundred and twenty-two, between John Perkins, of the county of Adams, State of Mississippi, and Mary, his wife, of the one part, and George Lake, of the county of Claiborne, State aforesaid, of the other part, witnesseth: That the said John Perkins and Mary, his wife, for and in consideration of the sum of five thousand dollars, to them in hand paid by the said George Lake before the sealing and delivery of *of* these presents, the receipt whereof they do hereby acknowledge, hath granted, bargained, sold, and enfeoffed and confirmed, and by these presents do grant, bargain, sell, enfeoffe, and confirm, unto the said George Lake, his heirs and assigns, all that certain tract, piece, or parcel of land, situate, lying, and being on the south side of the south branch of bayou Pierre, in the county of Claiborne, State of Mississippi, commencing at an ash marked P. V. B. L; thence running northeast on the dividing line between the tract of land belonging to the heirs of Peter Van Brugh Livingston, and the tract originally conveyed to Elihu Hall Bay, until it strikes the bayou Pierre; thence up the bayou Pierre, meandering the creek to the fork; thence up the south branch of the bayou Pierre to the south line of the Mandamus claim; thence on the said line to the place of beginning; containing six hundred acres, be the same more or less; being a certain part or portion of the Mandamus claim, originally conveyed to Elihu Hall Bay by the original owner, and afterwards conveyed by said Bay to John Perkins, by deed of conveyance bearing date the twenty-fifth day of January, one thousand eight hundred and nineteen, as will more fully and at large appear by reference to said deed, recorded in the register's office of Claiborne county, State aforesaid; to have and to hold the said tract, piece, or parcel of land, so as aforesaid described, together with the buildings and appurtenances, and all and singular other the premises hereby granted, bargained, and sold, or intended so to be, unto the said George Lake, his heirs and assigns for ever, and to and for no other use or purpose whatsoever; and the said John Perkins and Mary, his wife, for themselves, their heirs, executors, admin-

istrators, and assigns, do hereby covenant, promise, grant, and agree, to and with the said George Lake, his heirs, executors, administrators, and assigns, that they, the said John Perkins and Mary, his wife, and their heirs, the said tract, piece, or parcel of land and premises hereby granted, bargained, and sold, and every part thereof, to him, the said George Lake, his heirs and assigns, and against all and every person or persons whatsoever, claiming, or to claim, any right, title, or interest in and to the same, or any part thereof, by, through, or under them, or either of them, shall and will warrant and for ever defend, by these presents; and the said John Perkins and Mary, his wife, do*th* hereby further covenant, promise, and agree, to and with the said George Lake, his heirs, executors, administrators, and assigns, that they, the said John Perkins and Mary, his wife, will, in case the said George Lake, his heirs, executors, administrators, or assigns, should be evicted of the before mentioned tract of land, or any part thereof, by a superior or better title to the one herein given, then, and in that case, the said John Perkins and Mary, his wife, their heirs, executors, and administrators, shall and will refund to the said George Lake, his heirs and assigns, the consideration money for such part, or the whole, as the case may be, with interest from the time the notes became due, respectively, given to secure the consideration money, together with the legal costs of suit and damages that may accrue; and the said George Lake is to take the said tract of land subject to the lease at present subsisting thereon.

In witness whereof, the said John Perkins and Mary, his wife *hath* hereunto set their hands and seals the day and year above written.

JOHN PERKINS, [SEAL.]
MARY PERKINS. [SEAL.]

(The words "time the notes became due respectively," given to secure the consideration money, and two words about the middle of the 2d line on the fourth page, being first interlined and erased respectively. Also one word in the 13th, all the 14th and 15th, and one word in the 16th line, in the 3d page, being erased before the executing and delivery hereof.)

Signed, sealed and delivered in the presence of us as witnesses—

L. F. HIGGINS.
WM. M. DENNY.

STATE OF MISSISSIPPI,
Adams county, ss.

The above named John Perkins, and Mary his wife, personally appeared before the undersigned judge of probate, in and for said county,

and acknowledged they signed, sealed, and delivered this writing as their own free act and deed, for the uses and purposes therein mentioned; and the said Mary, being examined separate and apart from her said husband, acknowledges she signed the same as her own free act and deed, without any threat or compulsion whatsoever from her said husband.

Given under my hand this 17th day of February, 1824.

JOHN RICHARDS.

Received for record March 9, 1824, and truly recorded.

JOHN JENNINGS, *D'y clerk.*

THE STATE OF MISSISSIPPI,
Claiborne county.

I, John Wetherall, clerk of the probate court in and for the county and State aforesaid, do hereby certify, that the foregoing transcript contains a true copy of a deed from John Perkins to George Lake as taken from the records in my office.

Given under my hand and the seal of office, at Port Gibson, this the 30th day of November, in the year of our Lord one thousand eight hundred and thirty-six, and in the sixty-first year of American independence.

J. WITHERALL, *Clerk.*

Sale from Perkins to McAlpin; part of E. H. Bay tract, 1,000 acres, for the sum of $8,000; answer in the Louisiana case above mentioned referred to; see answer to 34th interrogatory; complainants introduce the answer of defendant, Perkins, in the case of Singleton vs. Perkins, Fourniquet et al., in the superior court of chancery of Mississippi, used upon the trial of this cause before the chancellor to show the above sales as being made, and that the Bay title was paramount.

Defendant refers to answer of Perkins in the case of Fourniquet et ux. & Ewing et ux. vs. Perkins in the above mentioned suit, in Louisiana.

Complainants object to said answer being introduced as evidence for the defendant, except where it is in direct response to an interrogatory.

Objection overruled, the answer having been introduced by the complainants in this cause at the trial before the chancellor, that portion of said answer referred to, commencing: This respondent denies, &c., and ending with words "and of ready money to a large amount;" also in relation to debts paid, &c.; also in relation to lands sold to Lake; also answer to 42d interrogatory; also answer to 43d interrogatory; also answer to 34th interrogatory; also answer to 27th interrogatory; also answer to 30th interrogatory; also alleging that he paid all the debts of the community, amounting to a large sum of money; to which statement being introduced the complainants objected, as being matters not connected with this suit, and relating to matters decided in the cause in Louisiana.

Objections overruled.

Record offered by defendant of the case of E. P. Fourniquet and wife vs. Perkins, in the ninth district court, parish of Concordia, Louisiana. The complainant objected to the same being introduced, not being a full record of the case named above.

Objection sustained.

The defendant then offered deed of release from Samuel McCamant and wife to John Perkins.

Release from Samuel McCamant and wife to John Perkins.

Whereas we, Samuel McCamant and Marg't McCamant, (formerly Tyler,) sole surviving heirs, in right of said Margaret, of Thomas Tyler, deceased, have a claim upon a tract of land lately sold by Arthur Mahan, since deceased, to John Perkins, esq., the purchase money of which being partly paid, the said John Perkins declines paying the balance until said claim is quieted; and whereas the said Samuel McCamant and Margaret, his wife, and Catharine Mahan and Adam Bower, administratrix and administrator of said Arthur Mahan, deceased, have this day come to a compromise of said claim, as by articles of agreement bearing even date herewith will more fully appear: Now, know all men by these presents, that we, Samuel McCamant and Margaret McCamant, for and in consideration of the premises, and of the sum of twenty-five hundred dollars to us in hand well and truly paid, or secured to be paid, the receipt whereof is hereby acknowledged, have remised, released, and forever quit-claimed, unto John Perkins, his heirs and assigns, all our right, title, interest, claim, and demand whatsoever, either in law or equity, of, in, or to all that tract of land and premises situated near Natchez, containing about one hundred acres, more or less, purchased by said John Perkins of Arthur Mahan, deceased, as by reference to the deed of said Mahan to said Perkins, duly recorded, will more fully appear; to have and to hold to said John Perkins, his heirs and assigns, forever.

In testimony whereof we have hereto set our hands and seals the day and year above written.

J. McCAMANT, [SEAL.]
M. McCAMANT. [SEAL.]

Signed, sealed, and delivered in presence of—
WILLIAM B. GRIFFITH,
CH. B. GREEN.

THE STATE OF MISSISSIPPI,
Adams county.

Samuel McCamant acknowledged before the undersigned, justice of the peace in and for said county, that he signed and sealed the foregoing deed to John Perkins, for the purposes therein mentioned; and

Margaret McCamant, being examined separate and apart from her husband, acknowledged that she signed and sealed the same of her own free will, without threatening or force from her said husband.

Witness my hand and seal, 15th August, 1826.

[L. S.]

H. TOOLEY, *J. P.*

I certify that the foregoing and within deed was received into my office, to be recorded, the 20th January, 1827.

WOODSON WREN, *Clerk*,
By J. GREEN, *Dep. clerk.*

STATE OF MISSISSIPPI,
Adams county.

I, Woodson Wren, clerk of the county court of said county, certify, that the foregoing and within deed has been duly recorded in my office in book P, page 387, of the record of deeds.

Given under my hand and seal of office, at the city of Natchez, this 5th day of Feb., 1827.

WOODSON WREN, *Clerk*,
By J. GREEN, *D. C.*

The defendant then offered deed from John Patterson and wife to John Perkins, dated 31st December, 1816.

Deed from John Patterson and wife to John Perkins.

This indenture, made this 31st day of December, in the year of our Lord one thousand eight hundred and sixteen, between John Patterson, of Claiborne county, Mississippi Territory, and Jane, his wife, of the one part, and John Perkins, of the parish of Concordia, State of Louisiana, of the other part, witnesseth: That the said John Patterson and Jane, his wife, for and in consideration of the sum of sixteen hundred and fifty dollars, current money of the United States, to them in hand paid by the said John Perkins, before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, enfeoffed, and confirmed, and by these presents doth grant, bargain, sell, alien, enfeoff, and confirm, unto the said John Perkins, his heirs and assigns, all that certain piece or parcel of land situate, lying, and being in Claiborne county, Mississippi Territory, on the waters of the bayou Pierre, containing one thousand and eighty acres, be the same more or less, being all that tract or parcel of land which was originally bequeathed by will to Christiana Hartley by her late father, John Hartley, bounded on the west by lands bequeathed by the said John Hartley to his son John, and on the east by lands bequeathed by the said John Hartley to his son Jacob, lately occupied by Richard Graham, which bequeaths will more fully appear by reference to the last will and testament of the said John Hartley, deceased, being the same tract or parcel of land conveyed by Christiana Hartley to Jane

Objections overruled.

Record offered by defendant of the case of E. P. Fourniquet and wife vs. Perkins, in the ninth district court, parish of Concordia, Louisiana. The complainant objected to the same being introduced, not being a full record of the case named above.

Objection sustained.

The defendant then offered deed of release from Samuel McCamant and wife to John Perkins.

Release from Samuel McCamant and wife to John Perkins.

Whereas we, Samuel McCamant and Marg't McCamant, (formerly Tyler,) sole surviving heirs, in right of said Margaret, of Thomas Tyler, deceased, have a claim upon a tract of land lately sold by Arthur Mahan, since deceased, to John Perkins, esq., the purchase money of which being partly paid, the said John Perkins declines paying the balance until said claim is quieted; and whereas the said Samuel McCamant and Margaret, his wife, and Catharine Mahan and Adam Bower, administratrix and administrator of said Arthur Mahan, deceased, have this day come to a compromise of said claim, as by articles of agreement bearing even date herewith will more fully appear: Now, know all men by these presents, that we, Samuel McCamant and Margaret McCamant, for and in consideration of the premises, and of the sum of twenty-five hundred dollars to us in hand well and truly paid, or secured to be paid, the receipt whereof is hereby acknowledged, have remised, released, and forever quit-claimed, unto John Perkins, his heirs and assigns, all our right, title, interest, claim, and demand whatsoever, either in law or equity, of, in, or to all that tract of land and premises situated near Natchez, containing about one hundred acres, more or less, purchased by said John Perkins of Arthur Mahan, deceased, as by reference to the deed of said Mahan to said Perkins, duly recorded, will more fully appear; to have and to hold to said John Perkins, his heirs and assigns, forever.

In testimony whereof we have hereto set our hands and seals the day and year above written.

J. McCAMANT, [SEAL.]
M. McCAMANT. [SEAL.]

Signed, sealed, and delivered in presence of—
WILLIAM B. GRIFFITH,
CH. B. GREEN.

THE STATE OF MISSISSIPPI,
Adams county.

Samuel McCamant acknowledged before the undersigned, justice of the peace in and for said county, that he signed and sealed the foregoing deed to John Perkins, for the purposes therein mentioned; and

Margaret McCamant, being examined separate and apart from her husband, acknowledged that she signed and sealed the same of her own free will, without threatening or force from her said husband.

Witness my hand and seal, 15th August, 1826.

[L. S.]

H. TOOLEY, *J. P.*

I certify that the foregoing and within deed was received into my office, to be recorded, the 20th January, 1827.

WOODSON WREN, *Clerk*,
By J. GREEN, *Dep. clerk.*

STATE OF MISSISSIPPI,
Adams county.

I, Woodson Wren, clerk of the county court of said county, certify, that the foregoing and within deed has been duly recorded in my office in book P, page 387, of the record of deeds.

Given under my hand and seal of office, at the city of Natchez, this 5th day of Feb., 1827.

WOODSON WREN, *Clerk*,
By J. GREEN, *D. C.*

The defendant then offered deed from John Patterson and wife to John Perkins, dated 31st December, 1816.

Deed from John Patterson and wife to John Perkins.

This indenture, made this 31st day of December, in the year of our Lord one thousand eight hundred and sixteen, between John Patterson, of Claiborne county, Mississippi Territory, and Jane, his wife, of the one part, and John Perkins, of the parish of Concordia, State of Louisiana, of the other part, witnesseth: That the said John Patterson and Jane, his wife, for and in consideration of the sum of sixteen hundred and fifty dollars, current money of the United States, to them in hand paid by the said John Perkins, before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, enfeoffed, and confirmed, and by these presents doth grant, bargain, sell, alien, enfeoff, and confirm, unto the said John Perkins, his heirs and assigns, all that certain piece or parcel of land situate, lying, and being in Claiborne county, Mississippi Territory, on the waters of the bayou Pierre, containing one thousand and eighty acres, be the same more or less, being all that tract or parcel of land which was originally bequeathed by will to Christiana Hartley by her late father, John Hartley, bounded on the west by lands bequeathed by the said John Hartley to his son John, and on the east by lands bequeathed by the said John Hartley to his son Jacob, lately occupied by Richard Graham, which bequeaths will more fully appear by reference to the last will and testament of the said John Hartley, deceased, being the same tract or parcel of land conveyed by Christiana Hartley to Jane

Burnet, now Jane Patterson, by deed of conveyance bearing date the sixth day of May, in the year of our Lord one thousand eight hundred and seven; also all that piece, parcel, or tract of land to which the said John Patterson and Jane, his wife, is entitled to by the will of Ann Catherine Hartley, deceased, being an undivided child's portion of a one thousand-acre tract, situate in the county aforesaid, on the waters of the bayou Pierre, adjoining lands of the heirs of Catherine Harmon, deceased, and others; which said one thousand-acre tract of land was originally willed by the said Ann Catherine Hartley, grandmother of the said Jane Patterson, wife to the said John Patterson, to her grandchildren; together with all and singular the buildings, improvements, woods, ways, waters, water-courses, rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereunto belonging or in any wise appertaining, and the revisions and remainders, rents, issues, and profits thereof, and all the estate, right, title, and interest whatsoever of him, the said John Patterson and Jane, his wife, both at law and in equity, of, in, to, and out of the said tract of land and premises hereby bargained and sold, or meant, mentioned, or intended hereby so to be, and every or any part and parcel thereof. To have and to hold the said tracts or parcels of land so as aforesaid described, together with all the buildings and appurtenances, and all and singular other the premises hereby bargained and sold, or meant, mentioned, or intended hereby so to be, and every part and parcel thereof, with their and every of their appurtenances, unto the said John Perkins, his heirs and assigns, forever, and to and for no other use, intent, or purpose whatsoever; and the said John Patterson and Jane, his wife, for themselves, their heirs, executors, and administrators, doth hereby covenant, grant, promise, and agree, to and with the said John Perkins, his heirs, executors, administrators, and assigns, that they, the said John Patterson and Jane, his wife, and their heirs, the said tracts or parcels of land and premises hereby granted, bargained, and sold, and every part and par*cels of land and premises hereby granted, bargained, and sold, and every part and par*cel thereof, with the appurtenances thereunto belonging, to him, the said John Perkins, his heirs and assigns, and against all and every person or persons whatsoever claiming, or to claim, any right, title, or interest in and to the same, or any part thereof by, through, or under them, the said John Patterson and Jane, his wife, or either of them, and against all and every person or persons whatsoever claiming, or to claim, by virtue of any sale or sales for any tax or taxes whatsoever, shall and will warrant and forever defend by these presents; and the said John Patterson and Jane, his wife, doth hereby further covenant, grant, promise, and agree, to and with the said John Perkins, his heirs, executors, and assigns, that they, the said John Patterson and Jane, his wife, will, in case the said John Perkins, his heirs, executors, administrators, or assigns, should be evicted or turned out of possession of before mentioned and described tracts or parcels of land, or any part or parcel thereof, by a superior or better title than the one herein given, or intended to be given, then, and in that case, the said

John Patterson and Jane, his wife, their heirs, executors, and administrators, shall and will refund to the said John Perkins, his heirs and assigns, the consideration money for such part or parcel thereof, or the whole, as the case may be, with interest from the date of these presents; also that they, the said John Patterson and Jane, his wife, will, at their own proper expense and charge, within a reasonable time from the date of these presents, cause to be surveyed by the proper county surveyor the before mentioned and described tract of one thousand and eighty acres of land, in due form and according to law, and a proper and necessary certificate and plot thereof made out by the said county surveyor, and furnished to him, the said John Perkins, his heirs or assigns.

In witness whereof the said John Patterson and Jane, his wife, hath hereunto set their hands and seals, the day and year first above written.

JOHN PATTERSON, [SEAL.]
JANE PATTERSON. [SEAL.]

Signed, sealed, and delivered in the presence of—the word fifty first terlined—

his
JOSHUA ⋈ HAMMOND,
mark.
W. WILLIS.

MISSISSIPPI TERRITORY,
Claiborne county.

Personally appeared before me, one of the justices of the quorum in and for the county of Claiborne, John Patterson, and acknowledged the annexed deed of conveyance to John Perkins to be his voluntary act and deed for the purposes therein expressed, this 31st day of December, 1816.

W. WILLIS, *J. Q. C. C.*

MISSISSIPPI TERRITORY,
Claiborne county.

Personally appeared before me, one of the justices of the quorum in and for the county of Claiborne, Jane Patterson, who, being examined separately and apart from her husband, John Patterson, acknowledged the annexed signature to be her voluntary act and deed, without force or compulsion from her husband, for the purposes therein expressed.

W. WILLIS, *J. Q. C. C.*

CLAIBORNE COUNTY, *ss.*

I, Peter A. Vandorne, clerk of the county court of said county, certify, that this deed of conveyance was filed in my office the 7th day

of October, 1817, and with the acknowledgments truly recorded in my office, in book E, No. 5, in pages 267, 268, 269, 270, and 271.

P. A. VANDORNE, *Cl'k.*

Also, deed from James Barland and wife to John Perkins, dated 25th July, 1817.

"*Deed from James Barland and wife to John Perkins.*"

This indenture, made this twenty-fifth day of July, in the year of our Lord one thousand eight hundred and seventeen, between James Barland and Christian, his wife, of the county of Claiborne, Mississippi Territory, of the one part, and John Perkins, of the parish of Concordia and State of Louisiana, of the other part, witnesseth:

That the said James Barland and Christian, his wife, for and in consideration of the sum of seven hundred dollars, lawful money of the United States, to them in hand paid by the said John Perkins before the sealing and delivery of these presents, the receipt whereof the said James Barland and Christian, his wife, doth hereby acknowledge, and from every part and parcel thereof doth acquit, exonerate, and discharge the said John Perkins, his heirs, executors, and administrators; and they, the said James Barland and Christian, his wife, hath granted, bargained, sold, aliened, enfeoffed, and confirmed, and by these presents doth grant, bargain, sell, alien, enfeoff, and confirm, unto the said John Perkins, his heirs and assigns, all that portion of land, containing six hundred and twenty-five acres, be the same more or less, situate on the waters of the bayou Pierre, in the county of Claiborne, being the full portion, and entire interest, claim, and demand of Nancy, who intermarried with George Tanneyhill; Elizabeth, who intermarried [with] Barnhart Bools; Christian, whose name is hereunto subscribed, and who intermarried with James Barland; John and David, now deceased children of Catherine, and grandchildren of Ann Catherine Hartley, since deceased, in and to a certain undivided one thousand acre tract of land, situated as aforesaid; which said one thousand acre tract of land was left by the aforesaid Ann Catherine Hartley, senior, deceased, by her late will and testament, to her then eight grandchildren, to wit, Nancy, Elizabeth, John, David, and Christian, children of her daughter Catherine; Elizabeth and John, children of her son, John Hartley; and Jane, the daughter of her daughter Christian; as will more fully and at large appear, reference being had to said will, on record in Jefferson county. Together with all and singular the buildings, improvements, woods, ways, waters, and water courses, and all the liberties, rights, privileges, hereditaments and appurtenances, whatsoever, and all the estate, right, title, and interest of them, the said James Barland and Christian, his wife, both at law and equity, of, in, to, and out of the premises hereby bargained, sold, or intended hereby so to be, and every part or parcel thereof. To have and to hold the said five portions as aforesaid, described or intended to

be, with all the buildings and appurtenances, and all and singular the premises hereby bargained and sold, or intended hereby so to be, and every part or parcel thereof, and with their and every of their appurtenances, unto the said John Perkins, his heirs and assigns forever, and to and for no other use, intent, and purpose whatsoever. And the said James Barland and Christian, his wife, for themselves, their heirs, executors and administrators, do hereby covenant, promise, and agree, to and with the said John Perkins, his heirs, executors, administrators and assigns, that they, the said James Barland and Christian, his wife, and their heirs, the said five portions of the said above described undivided one thousand acre tract of land, to wit, Nancy's, now Nancy Tanneyhill, Elizabeth, now Elizabeth Bools, Christian, now Christian Barland, and John and David, now deceased, children of the said Catherine, and grandchildren of the said Ann Catherine Hartley, sen., deceased, and premises hereby granted, bargained, and sold, and every part and parcel thereof, with the appurtenances thereunto belonging, to him, the said John Perkins, his heirs and assigns, and against them, the said James Barland and Christian, or either of them, and their heirs, and all and every person or persons claiming in, by, through, or under them, or any of them, and against the claim or claims of all and every person or persons claiming or to claim, by, through, or under any of the Hartleys, or the above named legatees, to wit, Nancy, now Nancy Tanneyhill, Elizabeth, now Elizabeth Bools, Christian, now Christian Barland, grandchildren to the before named Ann Catherine Hartley, and heirs and legal representatives of their said two brothers, John and David, now deceased, and also against the sale of the said land and premises for taxes for four years back, will warrant and forever defend by these presents.

In testimony whereof the said James Barland and Christian Barland, his wife, hath hereunto set their hands and seals the day and year first above written.

JAMES BARLAND, [SEAL.]

CHRISTIAN her ⋈ mark. BARLAND. [SEAL.]

Before signing and sealing the word "paid" in the 8th line interlined; in the 31st line on second page, the word "Nancy" omitted.

Signed, sealed, and delivered in the presence of—
STEPHEN D. CARSER,
BERNHART BOOLL.

MISSISSIPPI TERRITORY OF THE UNITED STATES,
Claiborne county.

Personally appeared before me, one of the justices of the quorum, in and for the county aforesaid, James Barland, the grantor, and Christian, his wife, and acknowledged the within written indenture to be their

act and deed; the said Christian being of full age and separate and at large examined from her said husband, acknowledged that she signed, sealed, and delivered the same without coercion or compulsion from her said husband.

In testimony whereof I have hereunto set my hand and seal this 25th day of July, 1817.

J. MOORE, *J. Q.* [SEAL.]

STATE OF MISSISSIPPI,
Claiborne county.

I, Peter A. Vandorn, clerk of the county court of said county, certify, that this deed was filed in my office for record the 20th February, 1821, and is with the acknowledgment truly recorded in book "F," No. 6, page 312, &c.

P. A. VANDORN, *Clk.*

The defendant then offered deed from Richard Grymes to John Perkins, recorded 7th Oct., 1817, but not acknowledged.

Deed from Richard Grymes to John Perkins.

This deed, made the twenty-fourth day of June, in the year of our Lord one thousand eight hundred and seventeen, between Richard Grimes, of the State of Louisiana and parish of Saint Landry, of the one part, and John Perkins, of the same State and parish of Concordia, of the other part, witnesseth: That for and in consideration of the sum of three hundred and fifty dollars in hand paid, the receipt whereof is hereby acknowledged, he, the said Richard Grimes, has bargained and sold, and does hereby grant, bargain, sell, convey, transfer, and set over, to the said John Perkins, his heirs and assigns, all that certain tract or parcel of land, situated in the county of Claiborne, in the Mississippi territory, and lying on the north side of the north fork of bayou Pierre, adjoining on one side to the lands of the purchaser, and on the other to land belonging to Elizabeth Hartley, and bounded on the south end by the said north fork of bayou Pierre, containing eight hundred superficial acres, more or less, and being part of a tract of land of one thousand acres, acquired by the said Richard Grimes and his wife by a quit claim from Samuel Gibson, Jesse Hamlinton, and Christian Harmar, executors of the last will and testament of John Hartley, deceased, and John Hartley, and Christian Wallet, heirs and devisees of the said John Hartley, deceased, and heirs of Jacob Hartley, deceased, bearing date the tenth day of December, in the year one thousand eight hundred and two, and recorded in Claiborne county, on the fifteenth of February, one thousand eight hundred and four, as per certificate of Wm. B. Elam, clerk; to have and to hold the said tract of land, with its appurtenances, to the said John Perkins, his heirs, executors, administrators, and assigns, forever. It being understood that the seller

did some years past convey the same tract of land to Francis Connell, who conveyed it to George Bell, and the said Francis Connell not having paid the consideration money or any part thereof, the said seller refused to deliver the premises either to the said Connell or his assignee, whereupon a suit was brought against him by the said Bell for the said land, which is now depending in chancery in the said county of Claiborne. Now, the said Richard Grimes, for himself, his heirs, &c., the said tract of land described as aforesaid against the lawful claims of all persons whatever, except the claims of the said Bell above mentioned, to the said John Perkins, his heirs, &c., does warrant and will forever defend; he also places the said John Perkins in his place and stead as it respects the said law suit and the result thereof.

In testimony whereof the parties have hereunto set their hands and affixed their seals at Opelousas, in presence of the subscribing witnesses, and before George King, judge in and for the aforesaid parish, and ex officio notary public, the day and year first above written.

his
RICHARD R. GRIMES, [SEAL.]
mark.
JOHN PERKINS. [SEAL.]

Witness—
SAML. MCINTIRE,
WM. P. DAVIS.

GEO. KING, *P. Judge.*

CLAIBORNE COUNTY, *ss.*

I, Peter A. Vandorn, clerk of the county court of said county, do certify, that this deed was filed in my office for record, the 7th day of October, 1817, and is truly recorded in book "E," No. 5, page 274.

P. A. VANDORN, *Clk.*

Also deed from Rachel Grimes and Richard Grimes to John Perkins. Recorded, but not acknowledged.

"*Deed from Rachel Grimes and husband to John Perkins.*"

This deed, made the twenty-fourth day of June, in the year of our Lord one thousand eight hundred and seventeen, between Rachel Grimes, late widow of Jacob Hartley, and wife of Richard Grimes, of the State of Louisiana and parish of Saint Landry, of the one part, and John Perkins, of the aforesaid State, and parish of Concordia, of the other part, witnesseth: That for and in consideration of the sum of three hundred and fifty dollars, in hand paid by the said John Perkins, to the said Rachel Grimes, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, she, the said Rachel Grimes, by and with the advice and consent of her said husband, Richard Grimes, has bargained and sold, and does hereby grant, bargain, sell, alien, confirm, transfer, and set over, to the said John Perkins, his heirs and assigns, all her right, title, claim, and in-

terest, in and to a certain tract or parcel of land, situated in the county of Claiborne, in the Mississippi Territory, and lying on the north side of the north fork of bayou Pierre, adjoining on one side to the land of the purchaser, and on the other to land belonging to Elizabeth Hartley, or heirs of John Hartley, and bounded on the south end by the said north fork of bayou Pierre, containing eight hundred superficial acres, more or less, and being part of a tract of land of one thousand acres, acquired by the said Richard and Rachel Grimes by a quit-claim from Samuel Gibson, Jesse Hamlinton, and Christian Harman, executors of the late will and testament of John Hartley, deceased, and John Hartley and Christiana Wallet, heirs and devisees of the said John Hartley, deceased, and heirs of Jacob Hartley, deceased, bearing date the tenth day of December, in the year of our Lord one thousand eight hundred and two, and recorded in Claiborne county, on the fifteenth of February, one thousand eight hundred and four, as per certificate of William B. Elam, clerk; to have and to hold the same to the said John Perkins, his heirs, executors, administrators and assigns, forever; and the said Rachel Grimes, by and with the advice and consent of her said husband, her dower, claim, and interest in and to the said tract of land, so described as aforesaid, and all and singular its appurtenances, against her heirs, and all persons claiming by, through, or under her, to the said John Perkins, his heirs, executors, administrators and assigns, does warrant and will forever defend.

In testimony whereof the said Rachel Grimes, together with the said Richard Grimes, as approving, consenting to, and ratifying this sale, have hereunto set their hands and affixed their seals, as also the said John Perkins, accepting the same, in presence of the subscribing witnesses, and before George King, judge in and for the parish of Saint Landry, and ex officio notary public at Opelousas, the day and year above written.

her
RACHEL ✕ GRIMES, [SEAL.]
mark.
his
RICHARD ✕ GRIMES, [SEAL.]
mark.
JOHN PERKINS. [SEAL.]

Witness—
SAMUEL MCINTIRE,
WILLIAM P. DAVIS.

[L. S.] GEORGE KING, *P. judge.*

CLAIBORNE COUNTY, *ss.*

I, Peter A. Vandorn, clerk of the county court of said county, do certify, that this deed was filed in my office for record, the 7th day of October, 1817, and is truly recorded in book "E," No. 5, page 272.

P. A. VANDORN, *Clerk.*

Complainants object to the introduction of said deeds, upon the ground of their never having been acknowledged, and the signatures not being proved. Objection overruled.

Defendant then offered a letter from John Poultney, jr., addressed to defendant, Perkins, dated July 28, 1818; also an account, dated 24th April, 1818, showing a balance due Perkins of $5,898 02.

The complainants object to the above mentioned letter and account being introduced, the signatures not being proven. Objection sustained.

Defendant allowed until 23d October next to introduce proof of said signature to the letter and account above mentioned.

Cause adjourned until to-morrow morning, 9 o'clock.

Tuesday, October 9th, 1849.

Present, solicitors for both parties.

The defendant offered in evidence the opinion of the Supreme Court of the United States, in the case of Fourniquet and wife vs. Perkins, in appeal from the circuit court United States, for the district of Louisiana, to wit:

Supreme court of the United States, December term, 1848.

E. P. Fourniquet et Ux., appts., vs. John Perkins. } No. 29.

On appeal from the circuit court of the United States, for the district of Louisiana.

Mr. Justice Daniel delivered the opinion of the court. This is an appeal from the circuit court of the United States, for the district of Louisiana.

In the year 1818, Mary Bynum, the widow of Benjamin Bynum, deceased, was living in the parish of Concordia, State of Louisiana, with four children, of whom Harriet, the wife of the appellant, was one. In August, 1818, Mrs. Bynum intermarried with John Perkins, the present appellee.

In August, 1824, Mrs. Perkins died; in March, 1827, Perkins filed two inventories and appraisements in the parish court, one of the estate of Benjamin Bynum, deceased, amounting to $26,055, and the other of Mrs. Mary Perkins, deceased, amounting to $6,575. About the same time, Perkins was appointed administrator of the estate of Benjamin Bynum and guardian of the infant children.

In May, 1827, he filed an account, showing an administration of the estate as far back as 1817. The account was filed by him as curator ad bona and tutor to the minor heirs.

In 1834, after the marriage of Harriet with Fourniquet, (the present appellant,) Perkins stated his account as guardian of Harriet Bynum separately, bringing her in debt to him $550 81, which sum Fourni-

quet paid by a check on the Planters' Bank. The following receipt was also subsequently given to Perkins by Fourniquet and wife:

EDWARD P. FOURNIQUET and Wife
vs.
JOHN PERKINS.

Release.

Received, Natchez, May 27th, 1834, of John Perkins, in settlement of an account, debts due, and demands whatsoever to the present day, one hundred dollars in full, having on a previous occasion received from him, as guardian of my wife, Mrs. Harriet Fourniquet, late Miss Bynum, all the estate, portion, and share she inherited by the death of her late father, Benjamin Bynum, late of Concordia, Louisiana, deceased, or her mother, Mrs. Mary Perkins, of the county of Adams, and State of Mississippi, and brother, Benjamin S. Bynum, of the county of Claiborne, State last aforesaid, deceased; and do by these presents, jointly with my said wife, release and forever discharge the said Perkins, either as guardian or otherwise, growing out of the estate aforesaid, or in any other manner or shape whatsoever, and forever exonerated him by these presents, his heirs, executors, and administrators, therefrom.

In witness whereof we have hereunto set our hands and seals the day and year first above written, to wit, in the year of our Lord one thousand eight hundred and thirty-four, in the presence of Elijah Bell and John E. Madox, whose names are hereunto subscribed as witnesses thereto; the said John Perkins being also personally present, and by these presents accepting.

Signed, E. P. FOURNIQUET, [SEAL.]
HARRIET J. FOURNIQUET, [SEAL.]
JOHN PERKINS. [SEAL.]

Signed, sealed, and delivered.

Witness[es] present—
ELIJAH BELL,
JOHN E. MADDOX.

STATE OF MISSISSIPPI, *Adams county.*

Personally before me, Woodson Wren, a justice of the peace for the county of Adams, appeared E. P. Fourniquet and Harriet J. Fourniquet, his wife, and John Perkins, whose names are subscribed to the foregoing instrument, and acknowledged that they signed, sealed, and delivered the same, as their act and deed, on the day and for the uses and purposes therein mentioned.

Given under my hand and seal, the 28th May, 1834.

Signed, WOODSON WREN. [SEAL.]

In 1837, the parties mutually confirmed the above instrument by the ollowing acknowledgment:

STATE OF LOUISIANA, *parish of Concordia.*

I, George W. Keeton, judge of the said parish, duly commissioned and qualified, do hereby certify and attest, unto all whom it doth or may concern, that Harriet J. Bynum, wife of Edward P. Fourniquet, and Edward P. Fourniquet and John Perkins, personally appeared before me and acknowledged that they had signed and sealed the foregoing instrument of writing as and for their proper act and deed. To the due execution thereof, an act being requested, the same under my seal of office, to serve as occasion may require.

Done and passed at my office, in the town of Vidalia, on the thirteenth day of January, A. D. eighteen hundred and thirty-seven.

Signed, J. W. KEETON, [SEAL.]
Parish judge.

In December, 1838, Fourniquet and wife, then residing in the State of Mississippi, filed their petition in the court of probates for the parish of Concordia, in the State of Louisiana, preferring their claim against Perkins for a large amount of property alleged by them to have come to his hands, and alleging that the receipt obtained from them had been given through ignorance and error, and in direct contravention of a provision of the law, and was therefore void. They charge upon Perkins, both as administrator and curator ad bona of the children of Mrs. Perkins, spoliations to a large amount *amount*, and prayed that he might render a full account of his transactions with respect to the succession of Benjamin Bynum and Mrs. Perkins, and with respect to his guardianship, and be compelled to make full compensation to the petitioners.

In February, 1839, Perkins filed his answer, first interposing three exceptions to the prayer of the petition. The two first of these exceptions it is not material here to notice; the third was in effect a plea in bar, insisting on the receipt and release above set forth. The answer followed the allegations of the petition, and controverted them all, alleging that the respondent had discharged his duty with fidelity.

A supplementary petition and answer were afterwards filed, which it is not necessary to state particularly.

On the 10th of December, 1840, the case was transferred by consent to the ninth district court, in the parish of Concordia.

On the 24th of December, 1840, the cause came on for trial in the district court, when the jury found a verdict for the defendant, and the court thereupon pronounced judgment in his favor.

In June, 1844, Fourniquet and ux. filed a bill on the equity side of the circuit court of the United States, in and for the district of Louisiana. It claimed, in right of the wife, part of her inheritable portion of estates of her father and mother, and prayed for a full account of the use and profits thereof from August, 1824, to May, 1827. It averred that Benjamin Bynum, the father of Harriet, left a large unencumbered estate at his death; that it was out of debt, and had a large

amount of money on hand, and debts due to it, at the time when Mrs. Bynum intermarried with Perkins; that Perkins took possession of all the property, mal-administered and used it as his own; that he presented false and fraudulent accounts to the court of probates. The bill admitted the execution of the receipt and release, but charged them to have been obtained by false representations; it stated that a suit had been brought in the probate court by the complainants, and that it had been transferred, by consent of all the parties, to the district court, but protested that the district court had no jurisdiction of the subject-matter thereof, and therefore its judgment could be no bar to the complainants' present suit; the bill then prayed for an account and general relief. To this bill Perkins pleaded in bar the record, proceedings, and judgments of the district court, averring that these embraced and concluded the whole matter set forth and complained of in the bill. The plea was supported by an answer which denied all the allegations of the bill.

On the 10th of April, 1835, the circuit court pronounced the following decree:

This cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed, as follows, viz., that the plea of the said defendant, by him pleaded in bar to the bill of the said complainants, be sustained, and judged a good and sufficient bar to the said plaintiff's action, as set forth in his bill, and that the said complainants' bill be dismissed, with costs.

On appeal from this decree brought the case up to this court. Although the decree of the circuit court is accompanied by no opinion or argument, setting out in extenso the grounds on which the bill of the applicants (the plaintiffs below) was dismissed, yet the foundation of this decree is plainly disclosed by reference to the plea of the defendant below, referred to and sustained by the circuit court in the fullest extent. This plea assumes the position, that the matters drawn into controversy by the bill had been previously litigated between these parties, and by a court of competent jurisdiction adjudged and settled against the complainants. The insertion of this plea here is deemed proper, as the character of the proceedings which enters into its averment, and constitute the bar as set up thereby, will furnish the readiest key to the exceptions urged against the decree of the circuit court.

The plea is in the following words:

In the circuit court of the United States, for the fifth circuit and eastern district of Louisiana.

E. P. Fourniquet and Wife
vs.
John Perkins.

The plea and answer of this defendant, John Perkins, to the bill of complaint and discovery of the said complainants.

This respondent, saving and reserving all benefit, &c., &c., shows

that, on or about the 15th day of December, 1838, the said complainants did institute a suit in the court of probates in and for the parish of Concordia, in the State of Louisiana, against this respondent, for the same cause of action as it set forth in the said complainants' bill; that the said suit was duly and regularly transferred for trial and judgment, upon all matters in issue therein, to the district court of the ninth judicial district of the State of Louisiana, held in and for the said parish of Concordia, when and where such proceedings and pleadings were had and such issue joined, as embraced the whole matters set forth and complained of in and by the said complainants' bill in their behalf filed and exhibited; and that, in the further due and lawful proceedings in said suit, and upon final hearing thereof, judgment was rendered in favor of this defendant upon all the matters in issue therein; all which will appear by a transcript of the record of the proceedings in the said suit duly authenticated, which is hereto annexed and exhibited, and made part hereof; which said judgment is final and conclusive between the said parties as to all the matters of the said complainants' bill, and this respondent pleads and sets up the same as a full and complete bar to the said bill, and prays that he may have the benefit thereof as such.

If this plea be correct in form, and true in substance, there can be no doubt that the subject now in controversy having become res adjudicata, the decision of the circuit court dismissing the bill of the complainant is vindicated from just exception. But exception is urged to that decision upon alleged legal grounds, said to be disclosed on the force of the plea and of the record adduced in its support, and that these being inadequate to sustain the decision, the latter cannot be supported. This is the material point in this cause requiring therefore particular examination.

It is insisted, for the appellants, that the proceedings instituted by them in the probate court of Concordia against Perkins, for an account of his administration of the successions of Benjamin Bynum and of Mrs. Perkins, (formerly Bynum,) and for an account of his guardianship of the wife of Fourniquet, as well as to render him liable for lands, slaves, crops, and moneys belonging to those successions and to the children of Bynum, were the proper proceedings for attaining the objects sought thereby, and that no other tribunal in the State of Louisiana than the probate court could legally take cognizance of those proceedings; and that the transfer, therefore, of the case in question, from the probate court to the district court of the State, though by the consent expressly given of all the parties, could not confer jurisdiction on the latter, whose decision consequently would be void, and could not be pleaded in bar of this suit. Again, it is said that, conceding the power of the district court to take cognizance of a case like the present, still the proceedings before this latter court, and its decision, did not embrace the rights and interests of the parties as set forth in the petition to the probate court, but were limited to the single question of the validity of the release executed by the complainants to the defendant on the 27th May, 1834. With regard to this second ground of exception

it may be remarked, that there is some want of precision in the record of the district court as to the subjects embraced within the issue, which seems to have been submitted to the jury by the court; but there is no more reason for supposing that issue to have been limited to the mere fact of the validity of the release mentioned, than there is for extending it to the whole matter in controversy. The petition brought up before the court was the same presented to the court of probate, covered the whole gravamen of the complainants' case; all their alleged rights and wrongs were embraced within its statements and prayers. This is not understood to have been a suit in equity, nor to have been one not cognizable by a jury. The fair presumption is, that the jury had the entire case before them; no exception to their cognizance of the whole case seems to have been interposed or thought of, and they rendered a general verdict for the defendant, to which verdict no exception was taken; on other grounds it seems inadmissible to suppose that the case submitted to the jury was limited to some specific fact or inquiry, or that the judgment of the court was necessarily founded upon any such fact alone.

By the consent order, transferring the cause from the probate to the district court, we find a very comprehensive arrangement as to the procurement and the forms of the testimony to be used; and in the entry of the judgment upon the record of the district court we find this language: "By reason of the law and the evidence, and the verdict being in favor of the defendant, it is therefore ordered, adjudged, and decreed, judgment be rendered in favor of the defendant." Thus it appears that the mind of the court was directed to the entire case before it, and not merely to one isolated question; that its judgment has embraced the whole cause as presented upon the petition, the exceptions, and the answer of the defendant; and, although the proceedings which led to the decision may seem to be irregular and anomalous, that decision must stand as a judgment binding between the parties thereto, unless shown to be void, for want of jurisdiction in the tribunal which pronounced it, or that it has been reversed and annulled by some competent supervising authority. This brings us back to the inquiry into the competency of the district court of the State to take cognizance of the subject on which its decision was made. By art. 126 of the Code of Practice it is declared, that the jurisdiction of the district court extends over all civil causes, when the amount in dispute exceeds fifty dollars. The natural import of this provision is to render the district courts of Louisiana courts of general jurisdiction in all civil causes not embraced within the above exceptions. But their powers have not been left to be now deduced, for the first time, from the language of the article above cited; they appear to have been defined and established by the supreme judicial authority of the State, and plainly distinguished from the functions of the probate courts with reference to subjects like those involved in the present case. The jurisdiction of the courts of probate appears to be confined to cases which seek a settlement, and on accounting for effects presumed to be in the possession of the representatives of a suc-

1850.

cession holding those effects in his representative character. When the purpose is to charge the executor or curator personally for fraud, maladministration, waste, or embezzlement, of the succession, the court of probates has not jurisdiction, but, in such cases, jurisdiction is vested in the district courts. The law appears to have been so ruled in many cases by the supreme court of Louisiana; a few of these will be adverted to.

Thus, in the case of McDonnough vs. Spriggins, L. R., 63, on an appeal from the court of probates, the point is thus succinctly stated by Matthews, justice, in delivering the opinion of the court: "This suit was commenced against the defendant in his capacity of curator, to obtain a judgment, rendering the succession which he represents liable to pay and satisfy the plaintiff's demand, and also to obtain a decree against him personally, on the event of the property being insufficient to pay all just claims against it, as having illegally administered the succession of the intestate."

The court of probates decided against the application, and the Supreme Court in passing upon that decision lay down the law in these words: "As an administrator de son tort, or as an intermeddler, he may be answerable to creditors for waste, but those pursuits against him must take place in a court of ordinary jurisdiction." The next case on this point is that of Bonquette's Guardian vs. Downey, 2 L. R., 193. There Porter, justice, pronouncing the decision, says: "It appears to us this is a demand against the executor, in his personal capacity, for the value of the property sold by him contrary to law; in other words, for a tort done by him. We think the probate court had no jurisdiction of the case, and that the petition must be dismissed, with costs, in both courts." In 6th Lou. Rep., 449, is the case of Hurst vs. Hyde, executor, in which it is ruled that "the court of probates has no jurisdiction in an action for damages occasioned by an act of the executor not legally done in relation to the administration of the succession." The last authority, which will be cited to this point, is one of later date; it is the decision of the supreme court of Louisiana in the case of Hemken vs. Ludewig, curatrix, a decision made in 1845, and reported in the 12th Robinson's Rep., 188, upon an appeal from the court of probates of Ouachita. This was a petition brought to subject the curatrix for what, in the legal language of Louisiana, is called a mal administration of the succession, corresponding with the term waste, in the common law. At page 191 of the volume, Judge Simon, in delivering the opinion of the court, thus states the law: "It is clear the court of probates was without jurisdiction to decide on the matters set out in the plaintiff's petition in relation to the defendant's personal liability. It is true she is sued as curatrix, but one of the principal grounds alleged against her from which she is said to have incurred personal responsibility, is that she has concealed property belonging to the estate and has converted it to her own use, whereby she has lost the benefit of her renunciation, and has become liable, personally, to pay the debts of her husband. The main object of the suit to

obtain judgment against her individually, and such was virtually the judgment appealed from. It is not pretended that the property she failed to include in the inventory is in her possession as curatrix, but that she claims the same as her own, and refuses to give it up. It is well settled that courts of probate have no jurisdiction of a claim against an administrator, personally, for mal administration." That the petition of Fourniquet and ux., presented to the probate court, and subsequently transferred to the district court, contained charges of mal administration, cannot be denied. Indeed, with respect to the successions of Mary Bynum, the mother, and Benjamin Bynum, the father of the petitioner Harriet, and with respect to the release charged to have been fraudulently abstracted from both the petitioners, it alleged not merely acts of mal administration, but instances of dishonesty and spoliation extraordinary in character and extent, and claimed of the defendant, in consequence thereof, a heavy personal liability for lands, slaves, and money, unjustly appropriated to his own purposes. From art. 126 of the Code of Practice, we have seen that the jurisdiction of the district courts of Louisiana extends over all civil cases where the amount in dispute is over fifty dollars; in other words, *than* these courts are courts of general jurisdiction. By the authorities cited from the supreme court of Louisiana, it is equally apparent, that the probate courts are not courts of general, but of special limited, jurisdiction, and that from their cognizance are excluded cases of fraud, torts, waste of mal administration generally committed by executors and administrators, and that these cases belong peculiarly to the cognizance of the district courts. Such being the conclusions warranted by a view of the law, and the facts of this case being of a character to fall directly and regularly within its operations, it may well be asked what just exception can be taken to the jurisdiction of the district court in this case? It was not a jurisdiction depending at all upon consent, which it is said cannot invest a court with power not belonging to it by its constitution; it was a transfer of a litigation, by consent, from a tribunal confessedly without authority to decide it, to a tribunal in every respect competent to take cognizance of the subject matter, whose peculiar province and duty it was to take cognizance of it. The exception, at the utmost, resolves itself into matter of form which the parties were competent to waive, and which they did waive; for, it is expressly stated upon the record, that the removal of the cause from the court of probate into the district court was by the consent of all concerned. It cannot be pretended that the forms of pleading may not be dispensed with by suitors, as it is certain that the benefit of matters, both of substance and form, may be lost by mere neglect or omission, where no intention of the renunication of either is apparent or ever existed. We must conclude that the district court had rightfully jurisdiction of the cause removed into it from the probate court; that its judgment is and must be building upon the parties to it until it shall be annulled or reversed by a competent authority. The parties to that judgment, the subject matter thereof, and embraced within the proceedings on which it was founded,

being identical with those comprised in the bill in the circuit court of the United States for the ninth circuit, now under review, the judgment was well pleaded in bar of the claims set up by the bill, and the decree of the circuit court sustaining this plea we hold to be correct, and the same is therefore hereby affirmed.

I, William Thomas Carroll, clerk of the Supreme Court of the United States, do hereby certify, that the aforegoing is a true copy of the opinion of said Supreme Court in the above entitled cause, delivered at December term, 1848.

In testimony whereof I hereunto subscribe my name, and affix the seal of said Supreme Court, at the city of Washington, this [L. S.] twenty-ninth day of May, in the year of our Lord eighteen hundred and forty-nine.

WM. THOS. CARROLL,
Clerk of Supreme Court, U. S.

To the introduction of which the complainants object, on the following grounds:

1st. Because it does not show that the matters in controversy in this case are the same as decided in the Supreme Court, U. S.

2d. Because, if a good defence, it should have been placed in bar before the chancellor.

3d. Because, if to be used for any purpose before his honor the chancellor, or before the master, it must be attached to, and form part of the whole record of the cause upon which judgment was rendered.

4th. Because in this suit in Concordia, the matters in controversy in this cause were expressly withdrawn from the consideration of said court. Objection sustained. Defendant then offered a certified copy from the probate court of Adams county, Mississippi, of a deed of mortgage from Edward Broughton to John Perkins, dated 25th September, 1815, showing a payment of $3,000 to Perkins. "Mortgage from Edward Broughton to John Perkins," September 25, 1818. This indenture, made this twenty-fifth day of September, in the year of our Lord one thousand eight hundred and eighteen, between Edward Broughton, of the parish of Concordia, State of Louisiana, of the one part, and of John Perkins of the same place, of the other part: Whereas the said Edward Broughton stands bound and indebted to the said John Perkins in the sum of six thousand dollars, in the following manner, to wit, by five several promissory notes bearing even date herewith; by one of said notes, in the sum of twelve hundred dollars, due and payable on or before the first day of January, in the year of our Lord one thousand eight hundred and nineteen; by one other of said notes, in the sum of twelve hundred dollars, due and payable on or before the first day of January, in the year of our Lord one thousand eight hundred and twenty; by one other of said notes, in the sum of twelve hundred dollars, due and payable on or before the first day of January, in the year of our Lord one thousand eight hundred and twenty-one; by one other of said notes, in the sum of twelve hundred dollars, due and

payable on or before the first day of January, in the year of our Lord one thousand eight hundred and twenty-two; and lastly, by one other of said notes, in the sum of twelve hundred dollars, due and payable on or before the first day of January, in the year of our Lord one thousand eight hundred and twenty-three; relation being had to said notes will more fully appear. Now, this indenture witnesseth, that the said Edward Broughton, as well for and in consideration of the aforesaid sums of money, and for the better securing the payment thereof to the said John Perkins, his heirs, executors, administrators, or assigns, with ten per cent. interest on said notes after they become due until paid, as the further sum of one dollar to him in hand paid by the said John Perkins, at and before the ensealing and delivery hereof, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, convey, and confirm, unto the said John Perkins, his heirs, *his heirs*, and assigns, all that part or parcel of lots number two and four, in square number three, in the city of Natchez, on which Peter Narden now resides, having forty-one feet front on the south side of Main street, and bounded as follows, beginning at the northeastwardly corner of said lot, hereby granted on Main street, and running thence southwardly along the line of James Moore's lot, one hundred and forty-five feet; thence westwardly at right angles with said Moore's line, thirty-three feet; thence northwardly, and parallel with said Moore's line thirty-seven feet; thence westwardly at right angles with the last mentioned line eight feet; thence northwardly and parallel with said Moore's line one hundred and eight feet to said Main street; thence eastwardly along the line of said Main street forty-one feet, to the place of beginning, being the same lots, or parts of lots, conveyed at different times by James Moore and wife, and Samuel Postlewaithe and wife, to said Peter Narden, and by the said Peter Narden, by deed of conveyance, bearing date the twenty-first day of September, in the year of our Lord one thousand eight hundred and eighteen, conveyed to the said Edward Broughton, as will more fully and at large appear, reference being had to said deed on record in the clerk's office in the county of Adams, in the Mississippi State, in book "K," pages 191, 192, of the records of deeds, together with all and singular the appurtenances, hereditaments, privileges, and advantages whatsoever, unto the above described premises belonging or in anywise appertaining; to have and to hold the said above granted, bargained, and described, premises, with the appurtenances, unto the said John Perkins, his heirs and assigns, to the only use and benefit and behoof of him, the said John Perkins, his heirs, and assigns, forever: Provided always, nevertheless, if the said Edward Broughton, his heirs, executors, administrators, or assigns, the aforesaid sum of six thousand dollars, on the days and at the times herein before mentioned and appointed for the payment thereof, according to the tenor and effect of the said recited promissory notes, without any fraud or further delay, and without any deduction, defalcation, or abatement whatsoever, to be made of any thing for or in respect of any taxes, charges, or assess-

ments whatsoever, then and from thenceforth, this present indenture and the estate hereby granted, and the promissory notes, shall cease, determine, and become absolutely null and void, to all intents and purposes, any thing herein before mentioned to the contrary notwithstanding.

In witness whereof the said Edward Broughton and John Perkins have hereunto set their hands and seals the day and year first above written.

EDW. BROUGHTON, [SEAL.]
JOHN PERKINS. [SEAL.]

Signed, sealed, and delivered in presence of—

The word or name "Edward" being first interlined on the first leaf and in the seventh line from the top; also on the second page, and in the seventh line the words "on or before the first day of January."

ELIJAH SMITH,
WOODSON WREN.

[Endorsed across the face:]

Received on account of the within mortgage, January 26, 1819, twelve hundred dollars.

JOHN PERKINS.

Received, March 8th, 1820, twelve hundred dollars, being the second payment due.

JOHN PERKINS.

Received, August 30th, 1820, twelve hundred dollars, being the third payment.

JOHN PERKINS.

Witness—WOODSON WREN, *Cl'k.*

STATE OF MISSISSIPPI,
Adams county, ss.

Personally appeared before the undersigned, chief justice of the county court in and for said county, the within named John Perkins and Edward Broughton, who severally acknowledged that they signed, sealed, and delivered the within instrument as their free and voluntary act and deed for the uses and purposes therein mentioned.

Given under my hand and seal this 25th September, 1818.

ELIJAH SMITH, *C. J.* [SEAL.]

I certify that the foregoing and within instrument of writing was received into my office to be recorded on the 25th day of September, 1818.

WOODSON WREN, *Clerk.*

THE STATE OF MISSISSIPPI,
Adams county, ss.

I, Richard A. Inge, clerk of the probate court of said county, do hereby certify the foregoing three pages to contain a true, perfect, and complete transcript of the record of the original mortgage and endorsements thereon, as fully and completely as the same remains of record in my office.

Given under my hand and the seal of said court, at the city of Natchez, this 26th day of March, A. D. one thousand eight hun-
[L. S.] dred and forty-nine.

RICHARD A. INGE, *Clerk.*

THE STATE OF MISSISSIPPI,
Adams county, ss.

I, Reuben Bullock, judge of the probate court (sole and presiding) of the county of Adams, State aforesaid, do hereby certify, that Richard A. Inge, whose genuine signature appears to the foregoing certificate, is, and was at the date hereof, clerk of said court, duly elected, qualified, and commissioned; that his said certificate is in due form of law, and that all of his acts in the premises are and ought to be entitled to full faith and credit in judicature and thereout. Given under my hand and seal this 29th day of March, A. D. 1849.

R. BULLOCK. [SEAL.]

To the introduction of which the complainants objected on the following grounds:

1st. Because the said mortgage and payments have been presented and relied upon by the defendant in the suit of E. P. Fourniquet et ux. and M. W. Ewing et ux., now pending before the master in chancery, L. Hunton, esq., acting under a decree of the honorable the circuit court of the United States, for the southern district of Louisiana.

Objection overruled.

Complainants ask leave to withdraw the deposition of Wm. B. Howell, taken by consent of parties, and filed in this cause with the master.

To the withdrawal of which the defendant objected.

Objection sustained.

Defendant asks that a commission be issued to Wm. P. Mellen, a commissioner duly appointed by the honorable the circuit court [of the] United States, for the southern district of Mississippi, to take the testimony of Alvarez Fisk as to the genuineness of the signature and handwriting of John Poultney, jr., to the letter addressed to, and account with, John Perkins, the defendant herein; said letter and account being offered in evidence in this case before the master.

Ordered, that a commission issue accordingly.

Complainants ask that the following interrogatories be propounded to the defendant, John Perkins, now present, which is granted.

Interrogatory 1st. Do you or not own $49\frac{26}{100}$ acres of the land pur-

chased from Mahan and wife by you; how much do you value said land per acre?

Interrogatory 2d. Have you offered to sell the said land, viz., 49 $\frac{56}{100}$ acres, or any part thereof, since your sale to John Watt; if yea, when, and to whom, and for what price?

Interrogatory 3d. Did you not receive from Broughton the sums of money marked on the face of the mortgage, for $6,000 of date 25th September, 1818, as follows, viz: July 26th, 1819, $1,200; March 8th, 1820, $1,200; August 30th, 1820, $1,200? Were or were not the said sums, or some part thereof, received by you in property, or in settlement of some claim or demand that said Broughton had against you; if yea, what amount was received in cash and what in property or settlement?

Interrogatory 4th. What disposition did you make of the property so received by you; when, and to whom did you sell it?

Interrogatory 5th. Did you ever receive from Broughton the amount remaining due on said mortgage, say $2,400; if yea, when did you receive it; was it paid to you in actual cash, or was it received in property or in settlement of claims or demands that Broughton had against you?

Interrogatory 6th. For what indebtedness existing between you and Broughton was it that the said mortgage was given? Please explain with all possible particularity.

Interrogatory 7th. Please look at the deed from Parker and wife, and say how is it that $600 appears as the consideration for said lot of land; was that sum paid by you in cash, or otherwise; if not, what sum was paid, and how paid?

The defendant, John Perkins, being by me first duly cautioned and sworn, in answer to the foregoing interrogatories, did depose and say, as follows, viz:

Answer to interrogatory 1st. There is about that quantity belonging to me, as well as I recollect. As to its value I know not; this is a matter of opinion in comparison with other lands; as I do not reside nearer than about 70 miles of the land, I have no satisfactory data to guide me in estimating its value. The opinion of intelligent persons residing in that vicinity I would regard as much more reliable than mine; and as they are accessible, and as I have no fixed opinion as to its value, would prefer not to state any.

Answer to interrogatory 2d. It is notorious that I have the land for sale, but I have fixed no price upon it, and do not know what I might be induced to take for it.

Answer to interrogatory 3d. The sums of money marked upon the face of the mortgage were received by me, and I presume at the time specified. The said sums were not received by me in property, or in settlement of any claims against me; they were received by me in cash from James Foster, to whom Broughton had sold some property. I never received any money from Broughton, but from Foster, who agreed to become the paymaster for Broughton.

Answer to 4th interrogatory. This is answered by my answer to the previous interrogatory.

Answer to 5th interrogatory. The amount due upon the mortgage was paid to me in cash by James Foster, and, to the best of my knowledge and belief, was paid as the several instalments became due, as specified in the mortgage. No part of the amount was received in property, or in settlement of claims or demands against me of said Broughton.

Answer to 6th interrogatory. The indebtedness existing between Broughton and myself was the price of a piece of land which belonged to me in Louisiana before my marriage, and which I sold to Broughton before my marriage.

Answer to 7th interrogatory. By the policy on the part of Mr. Parker and myself, that sum was not paid by me, but the sum of $200 was paid in cash.

Complainants then introduced the deposition of John P. Walworth, taken at Natchez, by consent of parties.

Before William H. Browne, master in chancery.

E. P. Fourniquet and Wife, and
M. W. Ewing and Wife,
vs.
John Perkins.

Interrogatories to be propounded to William B. Howell, George Winchester, and J. P. Walworth, witnesses residing at Natchez, examined on the part of complainants, in a certain suit in the circuit court of the United States, for the southern district of the State of Mississippi, in chancery sitting, wherein E. P. Fourniquet and Wife, and M. W. Ewing and Wife, are complainants, and John Perkins, defendant; the said cause being now, by decree of said court, before the master in chancery, to take and state an account between the aforesaid parties.

Interrogatory 1st. Do you know the parties to this cause?

Interrogatory 2d. Do you know the tract of land called the "Briers," about one and a half mile below the city of Natchez, a part of which was sold by the defendant to John Watt for the sum of $10,000?

Interrogatory 3d. When selling to the said John Watt, did or not the defendant retain, and does he not now own, some $49\frac{26}{100}$ of acres of the said Briers land, or about that quantity?

Interrogatory 4th. What is the said land, so retained by the defendant, worth per acre at this time? In your estimate include the value given to the said tract by the possession of Bacon's landing.

Interrogatory 5th. Has or not the defendant offered to sell the said tract of land, either in whole or in part, since his sale of a part thereof to John Watt; if yea, about what time was the offer of sale made, and at what price per acre?

Interrogatory 6th. Do you know, or can you set forth, any other matters or things that will be of advantage to either of the parties to this cause? If yea, set forth the same as fully and at large as if particularly interrogated thereto.

E. P. FOURNIQUET.

Cross interrogatories.

What is the present cash value of the "Briers?" What has it been sold for within a few years past? What is the character of the whole tract of land? Is it not cut up by deep washes and excavations of the bluff?

EUSTIS & OGDEN,
For defendant.

Before William H. Browne, master in chancery.

E. P. FOURNIQUET and Wife, and
M. W. Ewing and Wife,
vs.
JOHN PERKINS.

By virtue of my appointment as commissioner, under the agreement of solicitors in the above stated case, I caused to come before me John P. Walworth, and after being duly sworn, the said witness answers to the interrogatories as follows:

Answer to interrogatory 1st. I do.

Answer to interrogatory 2d. I know the tract of land called the "Briers," about one and a half miles from Natchez, but do not know the price at which it was sold by defendant to John Watt.

Answer to interrogatory 3d. I believe that when the defendant sold the land to John Watt he did retain about 50 acres of the said "Briers" tract of land.

Answer to interrogatory 4th. I consider the land retained by the defendant worth at this time about $15 to $20 per acre.

Answer to interrogatory 5th. I do not recollect whether the defendant offered to sell the said tract of land, either in whole or part, since his sale of a part thereof to John Watt.

Answer to interrogatory 6th. I do not know any matter or thing that is of advantage to either of the parties to this cause; but in further answer to the third interrogatory I would state, that I do not know whether the defendant still owns the 50 acres retained by him.

Witness answers the cross interrogatories as follows:

I do not know the present cash value of the "Briers." I know that the "Briers" property was sold under execution a few years since, but I do not recollect at what price. The land is hilly, and cut up by deep bayous.

J. P. WALWORTH.

Sworn and subscribed to before me this 5th day of October, A. D. 1849. WM. ROBERTSON,
Commissioner.

Before William H. Browne, master in chancery.

E. P. Fourniquet and wife, and
M. W. Ewing and wife,
vs.
John Perkins.

By virtue of my appointment as commissioner, conferred by consent of the solicitors of both parties in this cause, I have caused to come before me Wm. B. Howell, a witness named in the foregoing suit, who being duly sworn, upon his oath doth say, in answer to the following interrogatories:

Answer to interrogatory 1st. I do know the parties to this cause.

Answer to interrogatory 2d. I know the tract of land called the "Briers," about one and a half miles from the city of Natchez, but I do not know at what price the part of said tract was sold by defendant to John Watt.

Answer to interrogatory 3d. I believe that the defendant when selling did retain about fifty acres of said "Briers" land, and have always understood that he is still the owner thereof.

Answer to interrogatory 4th. I consider the land so retained to be worth $4 per acre.

Answer to interrogatory 5th. I do not know that the defendant has offered to sell the said tract of land, either in whole or part, since his sale thereof to John Watt.

Answer to interrogatory 6th. I know of no other matter or thing that will be of advantage to either of the parties to this cause.

To the cross interrogatories the witness, Wm. B. Howell, answers as follows: I cannot estimate the present cash value of the "Briers;" I do not know for what price it has been sold within a few years past; the character of the land is broken, and is much cut up by deep washes and excavations of the bluff.

W. B. HOWELL.

Sworn and subscribed to before me, this 5th day of October, A. D. 1849. WM. ROBERTSON,
Commissioner.

Complainants ask leave to procure testimony in New Orleans to show the fact that the amount of the mortgage from Broughton to Perkins, $6,000, and also in regard to the letter and account from John Poultney, jr., showing a balance due Perkins in New Orleans of $5,898 $\frac{92}{100}$, and relied upon as credits in the suit now pending before L. Hunton, esq., a master in chancery, in a suit between the same par-

ties in Louisiana, which is granted, and complainants allowed until 23d October to file said testimony.

Complainants then offered in testimony part of the answer of the defendant, Perkins, in the case of J. G. Singleton vs. Fourniquet, Perkins et al., in the supreme court of chancery of Mississippi, in relation to the Lyman mandamus.

To which the defendant objected, on the ground of not being a full record, &c.

Objection overruled; said answer having been introduced by consent as testimony before the chancellor.

Answer of Perkins in the case of Fourniquet and wife, and Ewing and wife vs. Perkins, in Louisiana, mentioned above, referred to, showing amount paid to Bynum. Answer to 20th interrogatory.

Complainants then offered to read the 20th interrogatory of the bill in the suit aforesaid, to explain the answer made to the said interrogatory.

To which the defendant objected, on the ground that no part of the bill was in evidence, and that they had not consented to the same, or any part thereof, being read; it being a printed copy of the record of the case in New Orleans. Objection sustained.

The complainants then read the answer to the 20th interrogatory; also

The complainants then read the answer to the 21st interrogatory; also

The complainants then read the answer to the 22d interrogatory; also

The complainants then read the answer to the 23d interrogatory.

The complainants asked leave to file interrogatories to be propounded to defendant Perkins.

To the granting of which the defendant objected.

Objection sustained; defendant having been once examined.

The complainants ask leave to file copies of the mortgage and documents relating thereto, recorded in the parish court of Concordia, Louisiana, from John Perkins to Francis A. Bynum, and the releases, to show that he made the payments from 1818 to 1824, inclusive.

To the granting of which the defendant objected, on the ground of irrelevancy to the cause at issue. Objection overruled.

Cause adjourned until 23d day of October.

Tuesday, October 23d, 1849.

The following documents were filed as testimony on behalf of complainants, viz:

Copy of answer of John Perkins in the case of Fourniquet and wife, and Ewing and wife, vs. John Perkins, in the circuit court of the United States for eastern district of Louisiana.

In the circuit court of the United States, for the fifth circuit and eastern district of Louisiana.

E. P. Fourniquet and wife, and Martin W. Ewing and wife, plaintiffs,
vs
John Perkins, defendant.

In equity.

The answer of the defendant, John Perkins, to the bill of complaint and discovery of the said Edward P. Fourniquet and Harriet J., his wife, and Martin Wickliffe Ewing and Ann S. Ewing, his wife, complainants.

This defendant, saving and reserving to himself all manner of exception to the many uncertainties, &c., &c., in the said complainants' bill contained, for answer thereto, or so much thereof as he is advised it is material or necessary for him to answer unto, he answers and says:

That true it is this respondent did, on the twelfth day of August, in the year of our Lord one thousand eight hundred and eighteen, intermarry with Mrs. Mary Bynum, the widow of Benjamin Bynum, deceased, and mother of the said complainants Harriet Jane and Ann S., and that the said marriage was solemnized in the parish of Concordia, where this respondent and his said wife then resided, and that the estate of the said Benjamin Bynum, deceased, was assessed on the assessment rolls of the taxes of the said parish, made in the month of March, eighteen hundred and eighteen, for the property, as set forth in the said complainants' bill, the estate of the said Benjamin Bynum was unencumbered so far as this respondent knows or is informed. There was about the sum of three hundred and sixty-six dollars in principal and interest received by this respondent after his marriage from Francis A. Bynum, for moneys due by him to the estate of Benjamin Bynum. There was also a sum of one thousand and eighty-seven dollars 18¾ cents due the estate of respondent's deceased wife, which this respondent received from Thomas and David Alexander, after the decease of his said wife; which sum this respondent accounted for to the complainants, as heirs of his said wife, in the year one thousand eight hundred and twenty-seven, although he did not actually receive the money himself from the said Alexanders until the year one thousand eight hundred and thirty-one.

There was also received by this respondent from Turner Bynum the sum of sixty-three dollars and ninety cents, making in the aggregate the sum of fifteen hundred and seventeen dollars and 8¾ cts., which is all that this respondent did ever receive on account of the estate of Benjamin Bynum, deceased, and for which sum he fully accounted to the said complainants and others, the heirs of said Benjamin Bynum and of Mary Perkins, deceased, in a full, fair, and complete settlement, made with them in the year one thousand eight hundred and twenty-seven.

This respondent has now no recollection of any other sums received, either on account of the estate of Benjamin Bynum, deceased, or of his deceased wife; with respect to the debt due from the estate of Henry Rives, deceased, the brother of his deceased wife, he has no recollection thereof, but he does know, and well recollects, the estate of the said Rives was insolvent, and that two slaves, Abb and George, which were inherited by his said wife from the estate of her said brother, and which had been delivered to this respondent, were, upon the insolvency of the said estate being declared, redemanded of this respondent for the payment of the debts of said estate; and that this respondent did actually pay their appraised value, and the said two slaves had been before accounted for and divided among the complainants and other heirs of his deceased wife as part of her estate.

This respondent denies that, at or about the time of his marriage aforesaid, he was embarrassed in his pecuniary affairs, as is falsely charged in the said bill; but on the contrary states, and so the truth is, that he was at that time in good and unembarrassed circumstances, and was possessed of large and ample property and means, both in Louisiana and Mississippi, and of ready money to a large amount.

This respondent does most expressly deny that he ever did give his deceased wife to understand that the Bynum force was to commence a new plantation for themselves in the rear of this respondent's Somerset plantation, on lands purchased about the time of the removal for that purpose, and paid for, in whole or in part, out of the Bynum crops of eighteen hundred and eighteen and eighteen hundred and nineteen, or by any sums of money collected by this respondent on account of the Bynum estate; and he does most expressly state, that the cause of the removal of the said slaves was the great liability of the Bynum plantation on Lake Concordia to be overflowed by the high waters, and the great uncertainty of raising crops thereon; and alleges most expressly, that all the charges in the said complainants' bill in relation to this matter are false and without any foundation.

This respondent denies that any such understanding or agreement between himself and his deceased wife, as is charged in the said bill, relative to the product of the Somerset plantation, or of the property he might acquire, or any agreement in relation to acquests and gains did ever exist, but that the said property was used, worked, and administered with the view solely to the legal and equitable rights of the parties interested, and in relation to which a true, just, and equitable account has been rendered to the complainants, and accepted by them; and he expressly states, that all the charges and allegations contained in the said bill in relation to these matters are untrue.

This respondent further answering says, that all the charges in the said bill of the said complainants in relation to debts paid, and to property acquired by him in the State of Mississippi, or elsewhere, out of the State of Louisiana, are perfectly groundless, and without foundation; that he paid his debts out of his own means, and purchased and paid for property in the State of Mississippi with his own moneys or

credit, and that the complainants have no legal or equitable claims upon him, arising either from the payment of his debts or the purchase of property as aforesaid.

This respondent further answering says, that the slaves and property charged in the said complainants' bill as having been purchased during this respondent's marriage from Edward Broughton were never actually purchased by him for his own account, nor were they ever his property, or in his possession, or any thing paid by him for the same, nor did they ever form any part or portion of any property actually acquired by him during the continuance of his marriage. It is true they were conveyed to him by the said Edward Broughton by deed, as set forth in the complainants' bill, and *and* on the fact of the said act of sale, the same appears to have been an absolute and unconditional sale and conveyance; but this respondent states, and so the truth is, that the said conveyance was made upon the express trust and understanding with the said grantor, Edward Broughton, that this respondent should hold the same interest for the wife and children of the said Broughton, and for their use, benefit, and support, and should, at any time when so required, be reconveyed, or settled and disposed of, for the uses aforesaid; which was actually done by this respondent by deed to Mrs. Sarah Broughton, executed on the nineteenth day of June, eighteen hundred and nineteen, and now of record in the said parish of Concordia, to which, for greater certainty, this respondent refers, and which he will hereafter exhibit. And this respondent avers and sets forth, that the object of the said conveyance to him, in trust as aforesaid, was to secure to the wife of the said Edward Broughton moneys or property which she had brought in marriage, and intended to operate as a settlement upon her without prejudice to any person, the said Broughton being then out of debt, and this respondent was chosen as trustee from his intimacy with the family, and the confidence they reposed in him.

In respect to the lands, alleged in said bill to have been purchased from one House, by deed dated on the thirteenth day of September, eighteen hundred and eighteen, this respondent answering says, that the said House was a mere squatter on the public lands in that quarter, and had no title to any specific quantity of land, and was in the occupation of a small but undefined portion of the public domain; that he did not acquire from him any title to any lands whatever, but only purchased out any right he might have to the improvement and clearing he had made, more with a view to get *read* of the said House from the neighborhood than from the value of his rights; and that he never did acquire title to any land by virtue of his purchase and deed of conveyance from the said House, who had no title himself; and subsequently the Turo claim, purchased from Gamaliel Pease, was located on the same land.

In relation to the charge in the said complainants' bill for lands purchased from Chauncey Pettybone, curator of the estate of Alexander McCormac, this respondent answering says, that it is true that the land

mentioned in said bill was adjudicated to him at the sale of the estate of the said McCormac, made by the court of probates of the parish of Concordia, on the sixteenth day of December, eighteen hundred and eighteen, for the price of one hundred dollars; but this respondent avers, and so the truth is, that the said sale or adjudication was null and void, and he acquired no title to the said land thereby, it subsequently appearing that the said McCormac was not dead, and that administration or curatorship of his estate had been wrongfully granted to the said Pettybone, at the instance of one Jonathan Thompson; he, the said Thompson, paid and refunded to this respondent the price at which the said land had been adjudicated to him; and this respondent assigned and transferred to said Thompson all the rights he had acquired under and by virtue of the said adjudication, both which adjudication, and assignment, and transfer to Thompson, took place during his marriage, and before the dissolution thereof by the death of his wife; and this respondent never did acquire any title, nor had any real interest in the said land until the ninth day of January, 1827, when he purchased the same from Israel Loring, for the sum of $8,000, he, the said Loring, having acquired a good title to said lands from the said McCormac in his lifetime, which said last purchase was made long after the death of his wife and the dissolution of the community, and the price paid out of the respondent's own individual means, resulting from sales of a portion of his property in the State of Mississippi, and what is called in said bill a pre-emption right; in the rear thereof was only 138 acres, which were located and surveyed under the act of Congress in favor of front proprietors, as appurtenant to and by virtue of his property in the front tract so purchased by him, and which location and survey was made by this respondent after the purchase from Loring, and only embraced the said 138 acres of land because all other lands in the rear had been previously located and appropriated, although Loring had entered and paid for the whole.

As it regards the charge in the said complainants' bill respecting the Warner, Carroll, and Turo tracts of land purchased from Gamaliel Pease, this respondent admits, that on the 1st day of March, 1820, he did purchase from the said Garliel Pease three tracts of land situated and described in the deed of conveyance of the said Pease and wife of that date, which will be exhibited, as situated on the waters of the Tensas; that this respondent resided at that time with his family in the State of Mississippi; the deed of conveyance called for land on the waters of the Tensas, and the actual location was vague and uncertain; and this respondent did not come into possession of any such land as is described in the said deed, but afterwards located and surveyed the same on that part of the public domain situated in the rear of the McCormac tract, and of which actual and official surveys and locations were not completed and approved until some time in or about the year 1830, and upon which surveys the quantity of land fell considerably short of that set forth in said complainants' bill.

As to the charge in the said bill respecting the land purchased from

William Collins, this respondent says, that the circumstances of the said purchase are in all respects the same as those above stated in relation to the Warner, Carroll, and Turo tracts; and that he never did come to the possession of any land on the river Tensas, as described in the deed from Collins to him.

In relation to the land charged as having been purchased by this respondent from Watson, curator of Patterson, this respondent answering says, that he never did acquire any title to land by the said adjudication or purchase from the estate of Patterson; that the said Patterson had no title to any such land; that, in fact, the land so sold as belonging to the estate of Patterson *were* public land upon which he had entered, and was the same settlement or rights which this respondent had purchased from Isaac House, as heretofore set forth in this his answer; that the land, thus settled upon by House and by Patterson were afterwards merged in the public domain, and were in part sold out by the United States to other persons, from whom afterwards this respondent purchased the same, long after the death of his wife, and part of this, respondent himself, with the exception of a small portion which was afterwards covered by this respondent in locating the tract purchased by him from Collins, as he has before stated; and he says, and so the title will show, that no specific or determinate quantity of land was ever sold or pretended to be sold either by the said House or the curator of Patterson to this respondent.

In relation to the 516 acres of land purchased from the United States, as charged in the said complainants' bill, this respondent admits, that he did, by virtue of the act of Congress passed on the day of , 1820, enter and obtain title to 489 acres of land in the rear of his land, called the Bullock tract, which privilege was accorded to him by the said act of Congress in virtue and by reason of his possessing the land fronting on the river, as will appear by the provisions of the act; and the said land in front, to which the said land so entered in the rear was an appendage, was his own separate property, and owned and possessed by him long before his marriage.

In regard to the land charged in the said complainants' bill as having been purchased from Samuel Gustine, this respondent answering says, that he acquired no land by virtue of the conveyance from the said Gustine; that by some means, not now particularly recollected by this respondent, but he believes by virtue of sale for taxes assessed on the lands in the name of J. House, the said Gustine had, or pretended to have, acquired some right or pretension to the land charged in the said bill as purchased as aforesaid, and which was the same land alleged to have been purchased by this respondent from Isaac House, as above stated in this respondent's answer to that part of said complainants' bill; and this respondent only purchased from the said Gustine his outstanding right or pretension thereto for the sum of $51 24; and the conveyance from said Gustine to this respondent is for the same land, the rights to which he had before purchased from House, and which,

as before stated, was of no value, and did not vest in this respondent any real value or title to any land.

In relation to the charge in the said complainants' bill respecting other property belonging to the community which existed between himself and his wife, amounting to $59,867 $\frac{6}{100}$, this respondent answering says, that he admits that at the death of his wife, in the year 1824, there was a crop of cotton growing on this respondent's plantation in the parish of Concordia, which, when gathered and sent to market, did produce the sum set forth in the said complainants' bill; but this respondent denies that the same was any part of the acquests and gains of any community which ever existed between himself and his deceased wife, or that the complainants had or have any just right in law or equity to any part or portion thereof as such. And this respondent avers that he has rendered to the said complainants a just and true account, and has paid to them their just and true portion of the said crop, and all others made by him arising from the work and labor of the slaves they inherited from their father and mother, being used in producing the same.

As it respects the sheep, horned cattle, and mules, horses, and colts, charged as being in the possession of this respondent at the death of his wife, this respondent admits that there were, at the death of his said wife on his plantation in the parish of Concordia, a number of sheep, horned cattle, horses, mules, and colts, but he does not now, after a lapse of 20 years, know or recollect the number of each, or the value thereof in money, nor has he now any means of ascertaining what number of each then existed, but he does not believe they approached the numbers set forth in the said complainants' bill. But this respondent avers, that whatever number did then exist, they were the sole and exclusive property of this respondent, and that the said complainants had no lawful or just claim to any part thereof as acquests and gains of a community between himself and his wife, as this respondent is advised and believes.

In relation to the piece of land sold to George Lake, this respondent says, that the said land *were* his own property, and never *were* in any sense community property; that the piece was his own, and that the complainants have no lawful or just claim to any portion thereof; and that he is not indebted to them, or in any manner accountable to them, for the sum of money, to wit, the half of $112,840, with interest thereon, as is claimed in the said bill, or any part or portion thereof.

This respondent, further answering, does most expressly deny all the fraud, concealment, and combination set forth and charged in the said complainants' bill; and he avers and sets forth, that very shortly after his marriage, finding that the parish of Concordia, in the State of Louisiana, was totally destitute of all means of education, and having no children of his own at the time, he determined to move his residence to the State of Mississippi, in the neighborhood of the city of Natchez, where he purchased land and made an expensive establishment, principally with a view to the better education of the children of his wife,

of whom the complainants, Mrs. Ewing and Mrs. Fourniquet, were two; that until the period of their respective marriages, the said complainants continued to reside with him, and this respondent devoted his time and expended large sums of money in bestowing upon them an education suitable to their condition in life, and at much greater cost than their fortunes would have entitled them to had this respon*ded* confined himself within the strict limits of their pecuniary means or expectations; that his paternal and most affectionate endeavors and exertions to bring them up and to educate them in a manner to fit and qualify them for any station in life, without regard to expense, was unremitted, until they respectively arrived at the age of majority or became emancipated by marriage, when he rendered to them a just and true account of all the property they had inherited from their father and mother, and divided the same among them to their entire satisfaction at the time.

This respondent does most especially deny, that at the time he rendered an account of his administration of the estates of the father and mother of the said complainants to the court of probates of the parish of Concordia, in the year 1827, that he concealed from the parties interested any of their rights, either in relation to the acquests and gains of any community which may have existed between his deceased wife and himself, or in relation to any other matters or things involved in the said account and settlement; but that, on the contrary, the same was rendered and the proceedings conducted in the most fair and open manner, and, as it regards this respondent, on the most liberal basis.

The same was conducted contradictorily with Martin W. Ewing, the husband of one of the complainants and the brother-in-law of the other complainant, lawfully representing his wife and the interests of the other complainants, as curator ad lite and under tutor lawfully appointed by the said court of probates, as will appear by the proceedings in the said court of probates referred to in the said complainants' bill, and to which respondent refers, and exhibits as a part of this his answer.

Your respondent shows that the community of acquests and gains between husband and wife is the effect of law, and is not the effect of contract or stipulation; that the said Martin W. Ewing was at the time of said settlement a practising lawyer, and could not be ignorant of his own rights, those of his wife, and his pupils, to whom he owed a sacred duty under the appointment which he had accepted as their curator ad lite and under tutor.

This respondent, on the contrary, believes that all the parties in interest had a full knowledge of all their rights in law and equity, and that throughout the whole of the transactions, which ended in their final receipts and acquittances to this respondent, they were fully aware of every lawful, equitable, or just claim they could make upon this respondent.

This respondent further answering says, that his final account and settlement, as before referred to, was shortly afterwards followed by a partition of all the property left by the said Benjamin Bynum, the

father, and your respondent's deceased wife, the mother of the said complainants, Ann S. Ewing and Harriet J. Fourniquet, among all the children and heirs of the said deceased Benjamin and Mary Bynum, as will appear by the records of the court of probates of the parish of Concordia aforesaid; and the same are referred to for greater certainty, and are, or so much thereof as is necessary to show the said partition, exhibited and prayed to be taken as part hereof.

Your respondent further answering shows, that the rendition of accounts and the partition of the property aforesaid among all the heirs of the said Benjamin Bynum and Mary Bynum, his deceased wife, as aforesaid, was carried into effect and finally consummated, so far as it regards the said complainants, Ewing and his wife, by their joint receipt and acquittance, bearing date the 11th day of April, 1828; which is hereto annexed, and exhibited, and prayed to be taken as a part of this his answer.

That on the 10th day of April, 1829, the same were fully approved, and consummated, confirmed by Benjamin S. Bynum, the son and co-heir of the said Benjamin and Mary Bynum, deceased, and by his sister, Mary C. Bynum, now Mrs. Eskridge, as will more fully appear by their joint receipt and release of that date hereto annexed, and exhibited, and made part of his answer; which receipt and acquittance was afterwards confirmed by the said Mrs. Eskridge, duly assisted by her said husband, who was then a judge of the Territory of Arkansas, by public and authentic act before the parish judge of said parish of Concordia, bearing date the 9th day of April, 1832; which is also hereto annexed, and exhibited, and prayed to be taken as a part of this his answer; and was finally confirmed and approved by the said complainants, E. P. Fourniquet and Harriet J., his wife, by their joint receipt and acquittance bearing date the 27th day of May, 1834, and acknowledged and affirmed on the 13th day of January, 1837, before the parish judge of the parish of Concordia; as will appear by the said release and acquittance herewith exhibited, and prayed to be taken as a part of this his answer.

This deponent expressly denies all the allegations in the said bill in relation to the said receipts and acquittances; that they were obtained through any fraud, misrepresentation, or concealment on his part, as is falsely alleged on the said bill; but, on the contrary, avers that they were executed and given with a full knowledge of all their rights and pretensions by the respective parties, and for a full and valuable legal and equitable consideration; that the administrative account rendered by him in 1827 was a most liberal and equitable settlement for the said complainants and their co-heirs, and afforded them advantages beyond what in law or justice they could claim from him; that, at the time the said accounts *was* rendered and the partition aforesaid made, this respondent was the father of three children born of his marriage with his said deceased wife, the mother of the complainants, Ann S. Ewing and Harriet J. Fourniquet, two of them then alive, (and the third died after the death of her mother, and to whom this respondent was heir,)

all of them infants and incapable of contracting or alienating their rights; that, upon the settlement and partition aforesaid being made, this respondent took upon himself to relinquish to the said complainants all the rights of his said three minor children in and to all the property of which their mother died seized and possessed, and the same was actually divided among the said complainants to the entire exclusion of this respondent's three children aforesaid.

This respondent admits that this was in accordance with the last will and testament of his said deceased wife, a copy whereof is hereto annexed and exhibited as part hereof; and that his respect for the wishes and intentions of his said wife would have induced him to execute the same, or to refrain from all steps to alter or change the same; but this respondent shows, that the dispositions of the said will were contrary to the laws of the State of Louisiana, according to which the testatrix could not disinherit any one of her children, or deprive them of their legitimate portions of her estate; under these circumstances, it was equally out of the power of this respondent to grant or cede the rights of his children so as to bind them in law, and all that his respect for the wishes and intentions of his deceased wife, as expressed in her will, could have permitted him to do would have been to suffer her will to be executed without positive and active opposition on his part, leaving it to his said children at any future time to assert their rights, and demand their legitimate portions of their mother's estate from the complainants who had thus received the whole of it.

But this respondent shows that at the time the settlement was made, and the partition of the property of Benjamin Bynum, the father, and Mary Bynum, this respondent's deceased wife, was made as aforesaid between the complainants, it was considered that natural equity and justice required, that if the children of the first marriage took all the estate of the mother, to the exclusion of the children of the second marriage, that the children of the second marriage should profit by the acquests and gains of the community under the second marriage, if any such community did exist, or there were any acquests and gains, and such was then considered to be the state of things in contemplation of the testatrix when she made and executed the will aforesaid; and that such was the meaning and intention of the said testatrix, knows, because it was so repeatedly stated to him by the testatrix at the time of making said will and after.

This respondent did not at the time believe, nor does he now believe, that the said complainants had then nor now have any just claims upon him arising from any gains of the community between him and his deceased wife, but respect for the wishes and intentions of his deceased wife, and a clear understanding of an abandonment of all claims that might exist against him on account of the said community on the part of the complainants, and a desire to promote their prosperity and happiness, and to settle them as advantageously as possible in the world, induced him not only to acquiesce in the distribution of his wife's estate among the children of her first marriage, to the exclusion

of the children of the second marriage, but he did, upon the said partition and distribution being effected, execute to the complainant, Ewing, or to him and his wife, and for the benefit of all concerned, a bond to hold them harmless, and to indemnify them against all future claims of his said children upon the estate of their mother, which bond is still in force, and in possession of the said complainants, or some one of them; and this respondent avers, that the principal and moving consideration of the said bond was the abandonment by said complainants of all claims against him of whatever nature or kind.

And this respondent avers, that the several receipts and acquittances mentioned and set forth in the said complainants' bill, to wit, that from Benjamin S. Bynum, the son, and his sister Mary C. Bynum, now Mary C. Eskridge, and the complainants, Ewing and wife, and Fourniquet and wife, as before recited, were intended to cover all and every claim that any of them might have by reason of the supposed community, or any acquests and gains that exist under or by virtue thereof, and have ever since been held and considered to that intent and purpose; and this respondent has ever since relied upon them for his peace and quiet and final discharge, and he avers and sets forth the consideration therefor was a fair and equitable one, greater in point of value than any thing which he obtained therefor, and much to the advantage of the said complainants, and that there exists now no equitable or just cause to disturb them; and that all the allegations and charges in the said complainants' bill in relation to the infancy and ignorance of the parties, and the fraud, concealment, and circumvention of this respondent, are untrue and without any foundation.

This respondent further answering says, that the allegations in the said bill in relation to the settlement made by him with Benjamin S. Bynum, the son, and in relation to the exchange of lands as therein stated and set forth, are untrue; and this respondent states, and so the truth is, that at the period of the said settlement, this respondent still actuated by a sincere desire to promote the interest and the comfortable establishment of all the children of his deceased wife by her first marriage, determined to secure to the said Benjamin S. Bynum, Mary C. Bynum, and Harriet J. Bynum a plantation or tract of land, each, upon which their slaves might be placed, and form a permanent and *and* valuable establishment for themselves.

That having consulted with the said Benjamin S Bynum on the subject as to the best manner of arranging and settling this matter, it was agreed that this respondent should give to the said Benjamin S. Bynum the tract of land in the county of Claiborne, in the State of Mississippi, called Long Branch; and that the said Benjamin S Bynum should give and convey to his sister Harriet J., now Harriet J. Fourniquet, his interest of one-fourth in the Concordia tract, and that this respondent should give to Mary C. Bynum, now Mary C. Eskridge, a tract of land or plantation in the neighborhood of Long Branch, and that she should also give to her sister Harriet J., her undivided interest of one-fourth in the Concordia tract of land inherited

from their father and mother, which united with her own fourth would concentrate her interest there, and form a suitable establishment *of* her; but the said complainant, Harriet J. Bynum, now Harriet J. Fourniquet, being at that time a minor and unmarried, and absent at school in the north, the said Benjamin S. Bynum suggested to this respondent the propriety of delaying to make the titles of his said sister Harriet until she was of age or settled in the world; and in the spirit of confidence and affection which had ever, until the time of his death, continued to exist between him and this respondent, that the said Benjamin S. Bynum and his sister Mary C. should convey their interest in the Concordia land to this respondent, to be held in trust for their said sister Harriet, and to be conveyed to her at a proper time, and for her greater interest and advantage, and in pursuance of this agreement the said Benjamin S. Bynum and Mary C. Bynum did convey to your respondent their undivided interest in the said lands by deed bearing date on the 21st day of April, 1829, which deed is hereby annexed and exhibited, and prayed to be taken as part hereof; and your respondent on the 1st day of May, 1829, did convey to the said Benjamin S. Bynum the land or plantation called Long Branch by deed of that date, which is also herewith exhibited; and on the same day did convey to Mary C. Bynum a tract of land in the neighborhood of Long Branch by deed of that date, which is also herewith exhibited.

Your respondent further shows that he held the said undivided portions of the Concordia lands on the trust aforesaid, until the year 1832, when the said Harriet J. sold her undivided interest in those lands to her brother-in-law, Ewing, and by that means the original designs of concentrating her interests, and forming a permanent and available establishment for her on the Concordia lands could no longer be carried into effect with advantage to herself; he thought it best to give her other lands in the same neighborhood with and adjoining the Long Branch plantation, of which she was then one half proprietor, by the death of her brother; and having consulted with Judge Eskridge, the husband of Mary C. Bynum, as to the propriety of making this change, who, except this respondent, was the nearest friend of the family, and most capable of advising for their best interest, and who expressed to this respondent his entire concurrence in his views, as best calculated to promote the interest of the said Harriet J.; and in consequence thereof this respondent did, on the 25th day of December, 1833, convey to the said Edward P. Fourniquet, the husband of the said complainant, Harriet J., his undivided interest in a tract of land in Claiborne county, Mississippi, by deed of that date, which is herewith exhibited, in full charge of the trust aforesaid, which was accepted by the said complainants, Fourniquet and wife, without complaint or objection, without any intimation of dissatisfaction on the part of either of them.

This respondent denies that there was any exchange of lands between him and the said Benjamin S. Bynum for any purpose but such as is herein before set forth; he denies that there was any defect in the

title of any of the lands so conveyed to him by the said Benjamin S. Bynum, or the complainants, Fourniquet and wife, or Mary C. Bynum; or that they, or either of them, have been disturbed or molested in the peaceable and quiet enjoyment thereof, or that he has derived any pecuniary advantage to himself from any of the said transactions; on the contrary, this respondent states that on the day of , or about that time, the said Benjamin S. Bynum departed this life; and that the said complainants, Ewing and wife and Fourniquet and wife, together with Mary C. Eskridge, have entered upon his estate as heirs-at-law, and have divided the same among them; and among other things, the Long Branch plantation, so conveyed to him by your respondent, and they have continued to hold and enjoy the same until this time. He avers that the Long Branch plantation was a most valuable property; that the said Fourniquet and wife have sold their one half interest therein for a large price, and have appropriated said price to their own use, to the amount of at least $30,000, as this respondent is informed, and verily believes.

This respondent expressly denies that any such judgment was rendered against him in any court in the State of Mississippi or elsewhere, as is set forth in the said complainants' bill. This respondent states that, relying upon the statement made with the complainants herein before set forth, and upon the validity of their several receipts and acquittances, and upon the good faith and equitable intentions of the said complainants, and their good feeling in consequence of the many advantages allowed them in final settlement made with him, he had proceeded to pay all the debts of the community, amounting to a large sum of money, and to make extensive and valuable improvements upon his property, when he was disturbed in his peace and quiet by the said Fourniquet and wife, the complainants, and that he did thereupon institute a suit to enforce the condition upon which the Long Branch plantation had been granted; but he avers that the whole statement in the said bill in relation to the judgment rendered therein, and the declarations and sayings of his counsel as to the motives and conduct of this respondent, are untrue, and that no final decision to his knowledge has ever been rendered therein.

Your respondent further answering shows, that among other great advantages allowed to the said complainants in the final settlement made with them, such as the payment of all the debts of the community as aforesaid, without charging them any part thereof, the giving up to the said complainants all the interest of his three children in the succession of their mother as herein before stated, and guaranteeing the said complainants against any claims therefor; there were two other children born of the marriage of the said Benjamin Bynum and Mary, his wife, to wit, Francis W. Bynum, and Henry Rives Bynum, who were alive at the time of the death of their father, Benjamin Bynum, and who died previous to their mother, and whose portion in the estate of their deceased father, was, by the laws of Louisiana inherited by their mother

as their heir-at-law, and in which portions his three children aforesaid were entitled to share by inheritance from their mother, and of which no notice or advantage was taken in the settlement and partition made with and among the said complainants.

Your respondent further answering shows, that, notwithstanding all the advantages allowed to the said complainants, as herein before stated, and the donations as aforesaid, by which they have reaped such great profit and advantage, the said complainants, contrary to equity and good conscience, are seeking to disturb your respondent, and to vex and harass him, by preferring against him the stale and unjust demands set up in their said bill of complaint.

And this respondent, finally, denying all the fraud, concealment, collusion, and combinations charged in the said complainants' bill, and especially denying all and singular the allegations of the said bill, not herein before especially answered to and denied or explained, prays that the said complainants' bill may be dismissed with costs, that your respondent may be quieted in the peaceable enjoyment of his property and estate from all the matters and claims so unjustly set up against him in and by the said complainants' bill, and that he may have all such other decree and relief in the premises as to justice and equity and good conscience may appertain.

And this respondent further answering, will now proceed to answer as far as lapse of time and circumstances attending the matters and transactions set forth in the said bill will permit him, the special interrogatories propounded by the said complainants. This respondent, in answer to the special interrogatories propounded to him by the said complainants in their said bill, he answers them as follows:

To the first interrogatory he answers, that he did, at the time stated in the said interrogatory, intermarry with Mrs. Mary Bynum, widow of Benjamin Bynum, deceased, and at the time of said marriage both this respondent and his wife resided in and were citizens of Louisiana.

To the 2d interrogatory this respondent answers, that his said wife did die, on or about the 12th of August, 1824, at the residence of this respondent, in the State of Mississippi.

To the 3d interrogatory this respondent answers, that, at the time of his marriage as aforesaid, his wife did reside on the plantation on which her first husband had resided.

To the 4th he answers, that at the time of his marriage he did cultivate a plantation on the Mississippi river, in the same parish and State, being a part of the lands called the Somerset estate, which then consisted of upwards of three thousand acres of land, six hundred and seventy-seven of which I hold by absolute grant, the rest by various titles purchased from squatters, who claimed title by occupancy, and a part by my own occupation; and to which was afterwards added so much of the double concession in the rear of the original grant of 677 acres as there was unappropriated public lands to satisfy, under the act of Congress of the day of , 1820.

To the 5th this respondent answers, that he has not the tax list now

before him, and cannot say on oath what it contains, but the assessment roll of the said parish will show what property of the estate of Benjamin Bynum was assessed for the taxes of the year mentioned in this interrogatory, and to which assessment roll this respondent refers for a full answer to this interrogatory.

To the 6th interrogatory this respondent answers to the same effect as to the last.

To the 7th this respondent says, that no family meeting was convoked, for the purposes mentioned in this interrogatory, to his knowledge.

To the 8th this respondent answers, that at the time of his marriage he caused no inventory and appraisement of the estate of Benjamin Bynum to be made and returned to the court of probate; this respondent was then, and is still, unaware that any such proceeding was necessary or required by law, an inventory and appraisement having been made about three years before in the course of the mortuary proceedings of Benjamin Bynum, and of record in the court of the probates of said parish.

To the 9th this respondent answers, that after the death of his wife, in 1824, he caused no such inventory and appraisement to be made as is mentioned in this interrogatory.

To the 10th this respondent says, that he did not qualify himself by authority of the probate court, to administer the estate of Benjamin Bynum and his deceased wife, at any time previous to the year 1827.

To the 11th this respondent answers, that when the Bynum negroes were removed from the Lake Concordia plantation, in 1820, such removal was made with the consent and at the desire of his said wife, and no such authority from the court of probates was deemed necessary, and none was applied for.

To the 12th interrogatory this respondent answers, that he never did act as clerk of any court in Louisiana; that he was for a time parish judge of the parish of Concordia, and he resigned his said office of judge, to the best of his recollection, some time in the year 1818.

To the 13th interrogatory this respondent answers, that when the slaves mentioned in this interrogatory were removed from the Lake Concordia plantation, they were placed upon a portion of the Somerset estate, as it is described in his answer to the fourth interrogatory, the titles to which are set forth in his answers to the said 4th interrogatory; their immediate location was in the rear of the lands cultivated in front on the river, but there was no particular tract of land, nor any specific number of acres, set apart for their labor and cultivation, but they were employed in the labor of the entire estate, wherever it was most wanted or judged most advantageous.

To the 14th this respondent answers, that several small cabins were erected for the accommodation of the said slaves; that they were under the superintendence of a man named Hoover, under whom they were removed, but Hoover was dismissed about three or four months after

the removal, and after that time they were under no particular superintendence, except of the overseer of the plantation on the river.

To the 15th interrogatory this respondent answers, that the whole ridge of land, containing three thousand acres and upwards, as described in his answer to the fourth interrogatory, was and is now called Somerset; that this respondent had an overseer on that part of the land on the river, and who, after the dismissal of Hoover, as set forth in his answer to the last preceding interrogatory, occasionally visited and directed the labor of the slaves in the rear.

To the 16th interrogatory this respondent answers, that the slaves mentioned in this interrogatory remained on that part of the Somerset tract of land where they were first located, until some time in the spring or early in the summer of 1823, as well as this respondent now recollects, when the high waters and the overflow of the river compelled their removal to the high lands in front, on the river, where they remained until their partition among the children of respondent's deceased wife by her first marriage.

To the 17th interrogatory this respondent answers, that there was a cane-brake, either on the spot or in the neighborhood of the spot, where the cabins of the said slaves were built, which, of course, was cut down and cleared up; and this clearing, together with the that had been cleared, used, and occupied by the squatters, or occupants, whose rights had been purchased out by this respondent, formed the land upon which the said slaves were principally employed during the time they continued in said location previous to their removal to the front lands.

To the 18th this respondent answers, that after the removal of the slaves to the front of the Somerset tract, they were employed in such work or labor as they were capable of; but there were among them so large a proportion of old Africans, breeding and suckling women, and such an over proportion of young children, that they were not of much use in any heavy labor; they were generally employed principally in the light work of the plantation, on the river or front of the Somerset estate, as before described.

To the 19th this respondent answers, that there was not due to the estate of the said Benj. Bynum, or to that of his deceased wife, the several sums of money in the complainants' bill set forth, to the knowledge of this respondent; that all the sums of money due to the estate of Benjamin Bynum or to his wife, at the time of his marriage, to the knowledge of this respondent, are those set forth in this his answer to that part of the said complainants' bill in chancery, charging him with the receipt of the moneys alluded to in this interrogatory, amounting in all [to] the sum of fifteen hundred and seventeen dollars $8\frac{3}{4}$ cents, and for which he has accounted, [as] herein before stated.

To the 20th this respondent answers, that he did pay to Francis A. Bynum the amount of the notes mentioned in this interrogatory, that is to say, I paid three of the said notes during the coverture, and one thousand dollars on the fourth. The remainder I did not pay until

1826, it having been attached or held by some legal process until that time, and when the judgment was rendered this respondent paid the money according to the judgment.

To the 21st this respondent answers, that he cannot say that Messrs. Rutherford, Fisk & McNeil, paid the note for him, but I found it in their hands, or that of one of the partners, and paid to them, as the agents authorized to receive it.

To the 22d this respondent answers, that all the said notes, as stated to have been paid by him in his answer to the two last interrogatories, were given by him for the purchase of twenty slaves, in the year 1812, from J. A. Bynum, on a credit of ten years, by yearly instalments; and which notes he paid as they respectively fell due, or at different periods after they became due, either to Bynum himself or persons holding the same by transfer, or otherwise authorized to receive the same amount.

To the 23d he answers, that he has no doubt that he paid to the Bank of Mississippi, in 1822, the amount which he then owed them; what the exact amount was, the respondent does not now recollect, not having made any memorandum or kept any account thereof; he had for some time before, and at the time of his marriage, a standing accommodation at that bank, which was sometimes enlarged and sometimes reduced; he thinks the amount then paid was upwards of two thousand dollars and less *and less* than three thousand.

To the 24th this respondent answers, that about the time mentioned in this interrogatory he did purchase from Arthur Mahon a piece of land in the neighborhood of Natchez, in the State of Mississippi.

To the 25th this respondent answers, that he did erect on the said land a dwelling house; that this establishment was called the "Briars;" that the house was large, and suitable to the number of his family; that it was furnished in a manner suitable to the wants of, and position, and comforts of his family. That he cannot say precisely what the building, levelling, fencing, furnishing, and other improvements, actually cost him, as he kept no account or memorandum thereof; and he believes they cost between ten and fifteen thousand dollars.

To the 27th this respondent answers, that he cannot say that he actually purchased from the said E. Hall Bay 2100 acres of land, as stated in this interrogatory. The facts of that transaction are these: This respondent was the owner of about two thousand acres of land in the Lyman mandamus, under a grant from the Spanish government, and which he had owned for some years previous; Bay claimed two thousand acres, or thereabouts, under the British grant, which was supposed to interfere with the lands of this respondent and to bring the two titles into conflict. This respondent did purchase from Bay his pretensions, under the British grant, to quiet his title under the Spanish grant; took a conveyance from him for the whole land claimed under it, and paid him the sum of five thousand dollars for his title.

To the 28th this respondent answers, that he being the owner of a considerable quantity of land in what was called the Lyman mandamus

grant, and there being various outstanding claims or titles to land within the limits of said grant which might interfere with this respondent's title, and among others a claim called the Hartley claim, and this respondent being anxious to perfect his title, did employ Mr. Sugars Turner to purchase for them the interest of one of the heirs of Hartly in the claim aforesaid. Mr. Turner made the purchase for this respondent, paid a thousand dollars for the same, and took a conveyance to himself; this respondent refunded to him the thousand dollars and took a conveyance to himself; whether the deed of conveyance was for a specific number of acres, or was the undivided interest of the heir who sold, or what are the precise terms of the deed, this respondent does not now remember, as it is many years since he has seen the deed; but when produced it will speak for itself. But this respondent never came into the actual possession of any particular portion or quantity of land under, or by virtue of the said deed; he bought it as an outstanding claim or title which might interfere with his own title to lands he already possessed, to perfect his own title, and quiet his possession. This claim or title did interfere with the lands of this respondent as held under his title from E. Hall Bay, and which title was thus perfected, and part of it was conveyed to the complainant, Fourniquet, by the deed of the 25th December, 1833, as in his answer stated.

To the 29th this respondent answers, that the land or claim to land conveyed to him by Turner formed no part of the Long Branch plantation.

To the 30th this respondent answers, that the Long Branch plantation was a part, or was formed out of lands of much greater extent, originally about 2,000 acres, part thereof purchased by this respondent in the year 1816 from John Patterson, and the rest purchased in the year 1817. I paid Patterson, for the lands purchased from him, seventeen hundred dollars, and the other portion cost me from four to six hundred dollars; I purchased it from one Grymes, to whom I paid three hundred dollars for his title, and afterwards expended other moneys to perfect the title.

To the 31st this respondent answers, that Isaac House, the person mentioned in this interrogatory, was a mere squatter on the public domain, and had no real title to any lands; I purchased from him the rights, which he supposed he had acquired by occupancy, with a view to get rid of him and his pretensions, so as to secure the lands without his opposition or interference, by purchase from the Government, or otherwise; although his receipt for the purchase money specified cattle, I never got any, nor were any delivered to me; and having accomplished my object in getting rid of House and his pretensions to the land, I never troubled myself about the cattle, and never came into possession or acquired title to any specific quantity of land under my purchase from House.

To the 32d this respondent answers, that about the time mentioned in this interrogatory there was adjudicated to him, at the sale of the estate of Alexander McCormac, a tract of land, supposed to be 640 acres, for the price of one hundred dollars; but that shortly afterwards

it appeared that the said McCormac was not dead, but only absent from the country; that administration of his estate had been improperly granted; that the sale to him was null and void; that the price he had paid was refunded to him, and the sale cancelled, and he acquired no title to any land thereby; that the granting of the administration on McCormac's estate to Pettybone had been mainly procured at the instance of one Jonathan Thompson; to him this respondent conveyed all the interests he acquired under the adjudication aforesaid, and who refunded to him the one hundred dollars he had paid to Pettybone, the administrator, and the sale was cancelled in that manner some time in 1821, or thereabouts, but long before the death of his wife.

To the 33d this respondent answers, that on or about the 9th of January, 1827, he did purchase from Israel Loring the same tract of land which he intended to purchase from the estate of McCormac, as stated in his answer to the last interrogatory, the said Loring having, in the mean time, acquired a good title thereto from McCormac, and for which he paid the sum of eight thousand dollars in notes; this purchase included the right to the back or second concession which Loring had entered and paid for to the Government.

To the 34th this respondent answers, that he did give to the said Loring, in payment for said land, the notes of McAlpin, for eight thousand dollars; which notes this respondent had taken from said McAlpin to secure the price of eight hundred or a thousand acres of land in the Lyman mandamus tract sold to him by this respondent; which lands *was* a part of the lands purchased from John Patterson and others, in 1816 and 1817, and the outstanding claim or title of E. Bay Hall to which he purchased, as is herein before stated in his answer to the 27th interrogatory.

To the 35th interrogatory this respondent answers, the right, under the act of Congress to the back or second concession, in the rear of the McCormac tract, amounting to six hundred and forty acres, was consummated by Loring and one Clark in 1821, by entering the same in the land office, and paying the money therefor into the treasury, and obtaining the receipt of the receiver of public moneys therefor; and was conveyed to this respondent by Loring in 1827, as herein before stated.

To the 36th this respondent answers, that he did, on the 1st day of May, 1820, purchase from the said G. Pease and wife three tracts of land, which are set forth and described in their deed to him of that date, which is hereto annexed, and exhibited as a part of this answer.

To the 37th interrogatory this respondent answers, that he did, on the 26th day of March, 1820, purchase from William Collins, a tract of five hundred acres of land, as will appear by the deed made to him on that day, which is hereto annexed, and referred to as making part of this answer.

To the 38th interrogatory this respondent answers, that the said Patterson was a squatter on the public lands; that he had no other title or right to any land but that of occupancy; that the land occupied by

Patterson was adjudicated to him at the sale of the estate of said Patterson; that no specific number of acres were acquired by the said adjudication; the deed of the curator, Watson, is hereunto annexed, and will shew the description of the land; that the settlement or occupancy of Patterson was of no value, but the object and chief inducement of the respondent was to clear his neighborhood of all such persons, and their pretensions to the land by occupancy. This land was afterwards included in grants *to* titles made by the Government to this respondent and others as part of the public domain. The thirty acres of land called for as adjoining this respondent never found or took possession of under the deed from Patterson's curator, his object being accomplished by getting rid of Patterson's pretensions to the principal settlement. The crop, consisting of corn standing in the field, worth as this respondent believes about one hundred and fifty or two hundred dollars; he gathered it in and used it on his plantation.

To the 40th interrogatory this respondent answers, that he did obtain from the Government a patent in the year 1837 for four hundred and eighty-nine acres of land as to the back or second concession of the river tract of the Somerset estate, purchased by this respondent of S. Bullock in the year 1806, and which he had entered in the land office some time in the year 1821, under the act of Congress allowing *to* the privilege of entering such lands to front proprietors.

To the 41st interrogatory this respondent answers, that the tract of land mentioned in this interrogatory was the same he purchased from Isaac House, as set forth in his answer to the 31st interrogatory, to which he especially refers as part of his answer to this interrogatory; that Samuel Gustine had acquired some right to the same at a sale made by the sheriff of Concordia for taxes assessed upon House, which right this respondent purchased from the said Gustine for the sum of fifty-three dollars and twenty-four cents, with a view to extinguish all pretensions or claims under House, and he herewith exhibits the deed from Gustine to himself as part hereof.

To the 42d interrogatory this respondent answers, that some time in the year 1821, or between that and the year 1824, he did sell to George Lake a certain portion of the lands which he owned in the Lyman mandamus in Claiborne county, in the State of Mississippi, and which he had acquired in the year 1816 and 1817, as herein before stated. The price for which he sold the same he does not now remember, but he believes the true consideration is expressed in the deed of conveyance, which he supposes is in the possession of his vendee, or some one claiming under him, and is not in the possession of this respondent.

To the 43d interrogatory this respondent answers, that he did not receive from Lake on the 1st of March, 1823, the sum of money mentioned in this interrogatory; this respondent received partial payments from Lake up to the year 1829 at various times, the particulars of which he does not now remember, and in 1829 he transferred the whole balance then due him from Lake in payment of other lands which he then purchased.

1845.

To the 44th interrogatory this respondent answers, that his crop on his Somerset estate did amount in the year 1824 to 268 bales, and was sold for the sum of $18,367 16/100, a just proportion of which sum was allowed to the complainants on the account rendered and settled in 1827, and which preceded their final receipts and acquittances, and the balance was applied to the expenses of the plantation for that year, to the payment of outstanding debts incurred during the continuance of his marriage, and in the support and education of his family.

To the 45th [interrogatory] this respondent answers, that he cannot say whether the tax list mentioned in this interrogatory represents him as possessing 4,657 acres of land, or what the same was valued at in the said list, not having the same before him, nor does he now recollect on what number of acres of land he paid taxes that year, but the assessment roll or tax list will show the number of acres, the amount at which it was assessed, and the amount of the taxes charged thereon.

To the 46th interrogatory this respondent answers, that if the said tax list does assess to this respondent 3,317 acres of land in one item, then he supposes it must mean to embrace his Somerset estate, which did consist of about that quantity. If the whole amount of land on the said tax list was 4,657 acres, he supposes that it was comprised of the Somerset estate, the Bynum tract of one thousand [and] forty acres, which was assessed in his name after his marriage, and a tract of land supposed to contain 300 acres he owned on the Mississippi river nearly opposite Natchez, and which he has sold to Lapice.

To the 47th interrogatory he answers, that he did not, during the period mentioned in this interrogatory, purchase any other lands except those embraced in this his answer as herein stated, and admitted to have been purchased and acquired by him, with the exception of a lot in the town of Natchez, Mississippi, which may have been purchased within that period, and which he afterwards gave as a donation to the Natchez Academy.

Signed, OGDEN & GRYMES,
Solicitors for defendant.

John Perkins, the defendant, being duly sworn, doth depose and say, that all the matters and things set forth in the foregoing answer to the plaintiffs' bill and interrogatories, stated as of his own knowledge, are true, and that all stated from the information of others he believes to be true.

(Signed) JOHN PERKINS.

Sworn to and subscribed before me, this 6th day of January, 1845.

(Signed) THEO. H. McCALEB,
U. S. judge.

Clerk's office U. States circuit court, fifth circuit and eastern district of Louisiana.

I certify the foregoing thirty-eight pages contain a true copy of the original answer on file. And further certify, that by request I have again collated the answer to the 27th interrogatory with the original, and that the same as herein written is a true copy.

In testimony whereof I have hereunto set my hand and seal of said court, at New Orleans, this 17th October, 1849.

ED RANDOLPH, *Clerk*,
Per J. W. GURLEY, *D. Clerk*.

"*Copy of mortgage from Perkins and wife to Arthur Mahon.*"

This indenture, made the 30th day of October, in the year of our Lord 1818, between John Perkins and Mary Perkins, his wife, of the parish of Concordia, State of Louisiana, of the one part, and Arthur Mahon, of the county of Adams, and State of Mississippi, of the other part. Whereas the said John, in and by his certain notes of hand, bearing even date herewith, stands indebted to the said Arthur in the sum of nine thousand nine hundred and twenty-six dollars, lawful money of the United States, to wit: One note for two thousand dollars, payable in all the month of January next; one note for two thousand dollars, payable in all the month of January, 1820; one note for two thousand dollars, payable in all the month of January, 1821; and one note for two thousand dollars, payable in all the month of January, 1822; and one note for nineteen hundred and twenty-six dollars, payable in all the month of January, 1823, as in and by said notes relation being thereto had more fully and at large appears.

Now this indenture witnesseth, that the said John and Mary, his wife, as well for and in consideration of said debt or sum of nine thousand nine hundred and twenty-six dollars, and for the better securing the payment thereof unto the said Arthur, his executors, administrators, and assigns, in discharge of said notes, and of the further sum of one dollar to them in hand paid by the said Arthur, at and before the ensealing and delivering hereof, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released, and confirmed, and by these presents do grant, bargain, sell, release, and confirm, unto the said Arthur, his heirs and assigns, all that tract of land situated, lying, and being in the said county of Adams, on the river Mississippi, about one mile below the old Spanish fort Panmure, in the city of Natchez, containing ninety-nine acres and twenty-six hundredths of an acre, being the same this day conveyed by said Arthur and Catherine, his wife, to the said John by indenture, which will more fully appear, relation being thereto had, together with all and singular the buildings, improvements, ways, woods, rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereunto belonging or in anywise appertaining, and the reversions and remainders, rents, issues, and profits thereof. To have and to hold the said messuage and tenement, tract and parcel of land, hereditaments, and premises hereby granted, or mentioned, or intended so to be, with the appurtenances, unto the said Ar-

thur, his heirs and assigns, to the only proper use and behoof of the said Arthur, his heirs and assigns, forever: Provided, always, nevertheless, that if the said John, his heirs, executors, or administrators, shall, and do, well and truly pay, or cause to be paid, unto the said Arthur, his executors, or administrators, or assigns, the aforesaid several sums of money, amounting in the whole to nine thousand nine hundred and twenty-six dollars, on the respective days and times herein before mentioned and appointed for payment thereof, according to the tenor of the said in part recited notes, without any fraud or further delay, and without any deduction, or defalcation, or abatement to be made of anything for or in respect of any taxes, charges, or assessments whatsoever, then and thenceforth, as well this present indenture and the estate hereby granted, as the said recited notes, shall cease, determine, and become absolutely null and void, to all intents and purposes, anything herein before contained to the contrary in anywise notwithstanding.

In witness whereof the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

JOHN PERKINS, [SEAL.]
MARY PERKINS. [SEAL.]

Signed, sealed, and delivered in the presence of—
E. TURNER,
JAMES STEEN.

STATE OF LOUISIANA,
Parish of Concordia.

Be it remembered, that, on the day of the date hereof, personally, before the undersigned judge in and for the parish aforesaid, appeared the aforesaid named John Perkins and Mary, his wife, and acknowledged the foregoing instrument of writing to be their free and voluntary act and deed for the purposes therein expressed and contained, and desired the same to be recorded as such.

[L. S.] Given under my hand and seal of office this 31st day of October, A. D. 1818.

EDWARD BROUGHTON,
Judge of the parish of Concordia.

I certify, that the foregoing and within deed was received into my office, to be recorded on the 10th day of November, 1818.

WOODSON WREN, *Clerk.*

Received, February 1st, 1819, of John Perkins two thousand dollars on account of the within mortgage.

his
ARTHUR ⋈ MAHAN.
mark.

Present—JAMES STEEN.

Received, the 1st June, 1820, of John Perkins two thousand dollars in full for the second instalment due on this mortgage.

his
A. ✕ MAHAN.
mark.

Witness—THOMAS MUNCE.

Received, June 20th, 1821, of John Perkins two thousand dollars, being in full for the third instalment due on this mortgage.

his
A. ✕ MAHAN.
mark.

Witness—HENRY MOSS.

Received, in the month of June, 1822, two thousand dollars in full for the fourth instalment on this mortgage.

ARTHUR MAHAN.

Witness—ROB. PIGGOT.

By JOHN P. CARSON, *his attorney.*

Natchez, 9th April, 1823.

We, the undersigned, administrator and administratrix of the estate of Arthur Mahan, deceased, acknowledge to have received from John Perkins the sum of two thousand two hundred dollars, being the last instalment in the annexed mortgage, including the interest on the same.

ADAM BOWER, *Adminis'r,*
CATHERINE MAHAN, *Admin'x.*

Natchez, June 26, 1826.
Witness—J. GREEN.

STATE OF MISSISSIPPI, *Adams county.*

I, Richard A. Inge, clerk of the probate court of said county, do hereby certify, that the within and foregoing instrument of writing is a true and correct transcript from the records in my office, book "K," pages 242, '3, and '4, on file in my office.

In testimony whereof I have hereunto set my hand and seal of my office, this 13th day of October, A. D. 1849.

[L. S.]

RICHARD A. INGE, *Clerk.*

Copy of deed from Elihu Hall Bay to John Perkins.

This indenture, made the twenty-fifth day of January, in the year of our Lord one thousand eight hundred and nineteen, between Elihu Hall Bay, of the city of Charleston, in the State of South Carolina, by Edward Turner, of the city of Natchez, of the State of Mississippi, his attorney in fact, of the one part, and John Perkins, of said city and State last mentioned, of the other part, witnesseth: That the said party of the first part, for and in consideration of the sum of five thousand dollars to

him in hand paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part, his heirs, executors, and *and* administrators, forever released and discharged therefrom, by these presents hath granted, bargained, sold, conveyed, and confirmed, and by these presents, doth grant, bargain, sell, convey, and confirm, unto the said party of the second part, his heirs and assigns forever, all the two following tracts of land, (being parts and parcels of a tract of twenty thousand acres, on the bayou Pierre, in the State of Mississippi, which was originally granted to Thaddeus Lyman, by Governor Chester, under the great seal of West Florida, in pursuance of a mandamus from the King of Great Britain, in favor of General Phineas Lyman, father of said Thaddeus, to wit: One tract containing one thousand and fifty acres, situated and bounded on the southeasterly line of said mandamus, and about two miles above the lower line, including the junction of the north and south forks of the bayou Pierre, being lot number seven, as represented on a plot of said Mandamus tract, annexed to a deed of conveyance from Thadeus Lyman, as will more fully appear, ref*f*erence being thereto had. Also, all that certain other tract of one thousand and fifty acres, adjoining and bounding on the northwesterly line of said Mandamus tract towards the Big Black river, situated about two miles above the lower line thereof, and nearly opposite to, or in a parallel direction across the Mandamus tract, from the tract No. 7 above described, conveyed by said Thadeus to Alexander McCullough, now deceased, whose heir at law and nephew, Alexander McCullough, conveyed the same to the said *Elisha* Hall Bay, being lot No. 8 on said plot; all which will more fully appear, ref*f*erence being had to said plot and conveyances as recorded in the register's office in the town of Washington; together with all and singular the appurtenances, hereditaments, privileges, and advantages whatsoever, unto the above described premises belonging, or in any wise appertaining; and also all the estate, right, title, interest, property, and claim whatsoever, either in law or in equity, of him, the said party of the first part, of, in, or to the same:

To have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns forever; and the said party of the first part, for himself, his heirs, executors, and administrators, doth covenant, grant, promise, and agree, to and with the said party of the second part, his heirs and assigns, that he, the said party of the first part, and his heirs, the above mentioned and described premises, and every part thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said party of the first part, and his heirs, and against all and every other person or persons lawfully claiming or to claim, by, from, or under him, them, or any of them, shall and will warrant, and by these presents forever defend.

In witness whereof the said party of the first part hath hereunto set his hand and seal, the day and year first above written.

ELIHU HALL BAY, [SEAL.]
By EDWARD TURNER, [SEAL.]
His Attorney.

Signed, sealed, and delivered, in presence of—
HENRY HANNAH,
HOWELL W. RUNNELS.

STATE OF MISSISSIPPI,
Adams county, ss.

Be it known, that on the 26th day of January, 1819, personally before the undersigned, one of the judges of the supreme and superior courts of the State aforesaid, appeared Edward Turner, who acknowledged that on the 25th day of January, 1819, he, as the attorney in fact of Elihu Hall Bay, signed, sealed, and delivered the within deed to John Perkins.

Given under my hand and seal, the day and year above.

J. G. CLARK. [SEAL.]

Filed in this office 30th January, 1819, and is truly recorded.

P. A. VANDORN.

THE STATE OF MISSISSIPPI,
County of Claiborne, ss.

I, Frederick J. Poor, clerk of the probate court in and for said county, do hereby certify, that the foregoing transcript of two pages and a part of this page is a true and correct copy of a deed from E. H. Bay to John Perkins, as the same appears of record in my office, in deed book F, pages 51, 52, 53, 54, and 55.

[L. S.] Given under my hand and seal of office, at Port Gibson, this the 17th day of October, A. D. 1849.

FRED. J. POOR, *Clerk*,
By JOHN F. WEST, *Dep. Clerk*.

The defendant filed the depositions of Alvarez Fisk, to prove signature of Poultney to acct. sales and letter to Perkins.

Copy of deposition.

UNITED STATES OF AMERICA,
Southern district of Mississippi, to wit:

The President of the United States, to William P. Mellen, greeting:

Know ye, that trusting to your fidelity and provident circumspection in diligently examining Alvarez Fisk, in a certain cause now depending in the circuit court of the United States, for the district aforesaid,

wherein E. P. Fourniquet and wife, and Martin W. Ewing and wife, are complainants, and John Perkins is defendant; you are requested at such certain days and places, as you shall appoint, to call and cause the said witness to come before you, and him diligently examine on oath, and his examination into the circuit court aforesaid, you distinctly and plainly set, together with this writ enclosed, with all convenient speed, to be used as evidence before W. H. Brown, master in chancery.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday in May, in the year of our Lord one thousand eight hundred and forty-nine, and in the 73d year of the independence of the United States of America.

Issued 9th day of October, 1849.

W. H. BROWN, *Clerk*,
Per CH. H. RODGERS, *D. C.*

Account sales of eighty-seven bales cotton, received per Sprigg Bayo, and sold for account and risk of John Perkins, esq.

March 14, 1818. To Jean Baptiste Dupre, 44 bales cotton, weighing as follows, viz:

P.—No.	70	287	61	392	69	395	67	387
"	94	350	48	410	84	360	71	362
"	43	395	54	393	86	362	85	384
"	60	381	45	395	57	388	47	373
"	58	379	66	382	65	388	56	399
"	53	380	64	409	68	397	72	350
"	55	388	83	387	62	377	41	472
"	44	376	49	400	87	360	35	465
"	46	403	38	426	63	403	78	354
"	36	431	51	386	42	398	76	365
"	50	385	52	387	75	355	59	383
		4255		4347		4183		4294

Total, 17,079 lbs., at 34c., $5,806 86

April 14, [1818.] To H. Monroe, Milne & Co., 43 bales of cotton, weighing as follows, viz:

P.—No.	40	432	12	406	7	392	18	387
"	25	363	27	357	2	398	20	367
"	34	411	11	383	31	406	22	392
"	13	417	1	388	37	378	79	351
"	8	395	28	355	23	377	26	356
"	19	380	10	375	6	398	39	376
"	73	362	87	386	30	364	14	420
"	80	390	33	396	9	406	29	392
"	24	355	17	386	32	370	21	390

P.—No. 4	380	15	405	5	383	77	355		
" 3	375	16	400	82	387				
	4260		4237		4259		3886		

Total, 16,642 lbs., at 30c., 4,992 60

Charges.

Paid freight - - - - -	$152 25	
" cartage - - - - -	21 75	
" laborers - - - - -	18 93	
" James Fruet one month's storage -	17 40	
Commission on $10,799 46, at 2½ per cent. -	269 97	
		480 30
Nett proceeds -		$10,319 16

E. E. (Due by equation 28th March.)

New Orleans, 24th April, 1818.

JOHN POULTNEY, Jr.

Account sales of thirty bales cotton, received per Wm. Boggs' boat, and sold for account and risk of John Perkins, esq.

April 14, 1818. To H. Monroe, Milne & Co., to 30 bales cotton, weighing as follows, viz:

P.—No. 93	358	101	366	116	338	104	347	
" 89	377	103	372	105	358	109	335	
" 106	378	115	285	102	370	92	342	
" 117	358	107	360	111	374	108	362	
" 110	343	100	347	99	351	113	355	
" 88	365	90	354	91	347	114	287	
" 96	353	94	363	112	345			
" 97	349	95	346	98	345			
	2861		2793		2828		2028	

10,510 lbs., at 30c. - - $3,153 00

Charges.

Paid freight - - - - -	$52 50	
" cartage - - - - -	10 12	
" laborers storing, unstoring, and weighing	6 75	
Commission on $3,153, at 5½ per cent. -	78 82	
		148 19
Nett proceeds - -		$3,004 81

E. E. New Orleans, 24th April, 1818.

JOHN POULTNEY, Jr.

NEW ORLEANS, 28*th July*, 1818.

JOHN PERKINS, esq.,

DEAR SIR: Your two favors, of 24th June and 12th inst., were received on the same day, say on the 20th inst., and the contents noted I am truly sorry for your loss in the burning of the gin, &c., but a you made a good crop last year, and will probably succeed as well this the loss will not bear hard on you.

I send herewith, by General William Carroll, in the steamboat Gen. Jackson, the two corn mills you ordered, and enclosed is the bill of lading. Such mills have generally cost here from $20 to $25 *dollars* a piece, but these we managed to get at $18, and hope they will please you. They are the largest and best in the place.

Enclosed also are account sales of your cotton, 83 and 30 bales, and an account current, showing a balance in your favor of five thousand eight hundred and ninety-eight $\frac{0}{100}$ dollars, which I have ordered a friend at Natchez to deposit to your credit in the bank there, as soon as he receives a sum of money due me there. I shall in a few days know whether it has been done, and if not done, I will send a check from here for the amount. On Monday next, or sooner, will write you again, to let you know exactly how the matter is fixed.

I remember well that you applied to me for bills to the amount of $3,500, or thereabouts, and that I agreed to furnish them; that I was long looking for your order to send them, but it did not come, or they would certainly have gone. I have no doubt of your having done in the business with Messrs. Bynum and Davis every thing that you ought to have done. Their agents have called upon me once, about two months ago, to inquire about your cotton, the sales, and so on; but not knowing them in the business, I answered cautiously, as I thought was my duty to do. They appeared to be expecting funds from you, but said nothing harsh, and I heard no more of it till yesterday, when Mr. A. J. Davis, of Rapide, called on me to inquire if I knew any thing of a bond of yours, which had been sent to Messrs. Flower and Finley for collection. I had no knowledge of it, and of course answered him so; he then said he could not find it, and it seems doubtful whether they will find it before hearing from Mr. William Flower, who is now on a visit to Baltimore. There is very little cotton left here. The late sales have been at from 25 to 34 cents, but the last accounts from England being rather unfavorable, 'tis dull just now; I, however, have no fears of its being low next winter.

Annexed are the prices at which Cologne mill stones sell. The thicker they are, the higher they are, of course; so when you order any, had better mention the diameter and thickness wanted. Most planters prefer having the upper stone very thick, say 10 inches or more. Bagging is selling at from 24 to 26 cents.

[I] am, dear sir, very respectfully, your obedient servant,

JOHN POULTNEY, jr.

Mill stones,	22 inch	- - - -	26 to 28 dollars
Do.	24 "	- - - -	28 to 30 "
Do.	26 "	- - - -	30 to 32 "
Do.	30 "	- - - -	40 to 45 "
Do.	34 "	- - - -	50 to 55 "
Do.	36 "	- - - -	50 to 60 "
Do.	40 "	- - - -	70 to — "
Do.	48 "	- - - -	75 to — "

Thick edge 10 to 12 inches thick.

Before William H. Brown, esq., master in chancery, in the matter of Fourniquet and wife and Ewing and wife vs. John Perkins, in the circuit court of the United States, for the southern district of Mississippi. In chancery.

Interrogatories to be propounded to Alvarez Fisk, esq., of the city of Natchez, the answers to which will be read as evidence on behalf of the defendant, before said master, in the taking of the account by him in said cause.

Interrogatory 1st. Were you acquainted with one John Poultney, jr., formerly a commission merchant in the city of New Orleans, La.?

Interrogatory 2d. Is he still living?

Interrogatory 3d. Were you acquainted with the handwriting of said John Poultney, jr., from having seen him write, or from having seen manuscripts acknowledged by him to be in his handwriting?

Interrogatory 4th. Please to look upon the annexed account of sales, dated "New Orleans, 24th April, 1818," and signed "John Poultney, jr.;" and also upon the annexed letter, dated "New Orleans, 28th July, 1818," and signed "John Poultney, jr.," and say whether from your knowledge of his handwriting, the same respectively, or either of them, is signed by "John Poultney, jr.?"

OGDEN & CLIFTON,
Solicitors for Perkins.

General interrogatories waived. No cross interrogatories asked.

E. P. FOURNIQUET.

UNITED STATES OF AMERICA,
Southern district of Mississippi.

Circuit court, United States.

I, William H. Brown, clerk of said court, do hereby certify, that the foregoing interrogatories are truly copied from the originals on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Jackson, the 19th day of October, A. D. 1819.

[L. S.]

W. H. BROWN, *Clerk*,
Per CHARLES H. ROGERS, *D. C.*

UNITED STATES OF AMERICA,
The State of Mississippi, Adams county.

Pursuant to the commission hereto annexed, I, William P. Mellen, the commissioner therein named, caused Alvarez Fisk, a witness in the cause now pending in the circuit court of the United States, for the southern district of Mississippi, wherein E. P. Fourniquet and wife and Martin W. Ewing and wife are complainants, and John Perkins is defendant, to come before me, at my office, in the city of Natchez, on the thirteenth day of October, A. D. eighteen hundred and forty-nine: and the said witness, having been first duly sworn to testify the truth, the whole truth, and nothing but the truth, testified under his said oath, in answer to the interrogatories hereto annexed on behalf of said defendant, as follows, to wit:

To the 1st interrogatory the said witness answers: Yes; I was.

To the 2d interrogatory the witness answers: John Poultney, jr., is not living; he died, I think, between 1820 and 1825; I cannot recollect the precise time he died.

To interrogatory 3d the witness answers: I have seen the said John Poultney, jr., write hundreds of times.

To the 4th interrogatory the witness answers: The said account sales and letters mentioned are all signed by the said Poultney.

ALVAREZ FISKE.

And I, William P. Mellen, the commissioner aforesaid, having reduced the said examination to writing, and having read the same to the said witness, who then and there signed [the] same in my presence, hereby certify the same under my hand and seal at Natchez, county aforesaid, on the day and year mentioned in the caption thereof.

WM. P. MELLEN, [SEAL.]
Commissioner.

Wednesday, March 20, 1850.

Pursuant to notices issued to solicitors for both parties, the master attended at his office, in the city of Jackson, this day, for the purpose of hearing and determining objections made to the rough draft of the account taken herein, when the following objections, (marked F,) were filed by defendant's solicitor, and by me overruled. In all decisions made by the master at the taking of the account, it is understood that the party against whom such decisions *was* made, excepted at the time to the opinion of the master.

W. H. BROWN,
Master, &c.

"Exceptions to master's report"

Circuit court, United States, southern district of Mississippi. Before W. H. Brown, master, &c.

E. P. FORNIQUET et al.
vs.
JOHN PERKINS.

The defendant, John Perkins, objects to the account stated by the said master, wherein he finds the sum of $44,543 invested in Mississippi, on the following grounds:

1st. Because the said master had no proof before him that said sums so invested were derived from the estate in Louisiana.

2d. Because the said master rejected testimony as to the pecuniary means which defendant had at that date in the State of Mississippi, separate and entirely distinct from his estate in Louisiana.

3d. Because no notice is taken of the present value of the property in which said moneys were invested. The account is based upon the entire sums invested, of profit and loss upon investments which defendant had the legal right to make.

4th. Because the defendant should only account, if at all, for sums realized from the investments when they were sold, or should have the privilege of returning the property if not sold.

H. S. EUSTIS,
Sol. for defendant.

March 16th, 1850.

And afterwards, to wit, on the 15th day of May, A. D. 1850, this case was set for hearing on exceptions to the master's report herein by consent of solicitors.

And on the said 15th day of May the following order was entered in said case, to wit:

Argued and submitted on exceptions to master's report.

And afterwards, to wit, on the 16th day of May, A. D. 1850, the following interlocutory decree was entered in said case, to wit:

E. P. FORNIQUET et al.
vs.
JOHN PERKINS.
In chancery.

On exceptions to master's report.

The exceptions to the master's report having this day come up for hearing before his honor, Samuel J. Gholson, exercising circuit court and chancery jurisdiction, and the same having been argued by counsel, and his honor the Chancellor being now sufficiently advised, doth see fit to order, and doth accordingly order, that said report be remanded back to the master, with directions to take testimony upon proper notice to the parties, and for the purpose of ascertaining and

reporting to this court the value of the estate near the city of Natchez, referred to in the pleadings, and called the "Briers," at the date of the dissolution of the marriage by the death of Mrs. Perkins in 1824.

And that said inquiry be conducted in conformity to the rules of this court regulating reference to the master, all other questions being reserved until the coming in of said report at the next term.

S. J. GHOLSON.

May 16, 1850.

It is further ordered by the court that William H. Brown, the master in this cause, be allowed the sum of one hundred dollars as a compensation for his report made to the present term, to be paid by the defendant herein within 60 days.

And afterwards, to wit, on the 1st October, 185 , the following report was made in said cause:

Master's report.

UNITED STATES OF AMERICA,
Southern district of Mississippi.

EDWARD P. FORNIQUET and Harriet J., his wife, Martin W. Ewing and Ann S., his wife, complainants,
vs.
JOHN PERKINS, defendant.
} In chancery.

To the honorable the circuit court of the United States, for the ninth circuit and southern district of Mississippi.

Wm. H. Brown, the master to whom the above stated cause was referred, by virtue of a decree rendered by this hon. court at the May term thereof, A. D. 1850, for the purpose of ascertaining and reporting the value of the property known in the pleadings as the "Briers" at the date of the dissolution of the marriage by the death of Mrs. Perkins, in August, 1824, begs leave to report:

That upon a full investigation of the testimony he finds no reason for altering the report formerly made in this cause as to the amount charged against defendant Perkins as the value of the "Briers," to wit, $23,000, except as to the amount of $500, proved to have been paid for improvements on said place subsequent to the death of Mrs. Perkins.

The master begs leave to refer the court to the accompanying document, marked "A," for the minutes of the proceedings had and the testimony presented at the hearing.

Respectfully submitted,

W. H. BROWN,
Master in chancery, circuit court, U. S. So. district, Mississippi.

October 1st, 1850.

Copy of document "A" accompanying master's report.

Circuit court, U. S. In chancery.

UNITED STATES OF AMERICA,
Southern district of Mississippi.

EDWARD P. FOURNIQUET et al.
vs.
JOHN PERKINS. } No. 158.

Proceedings before William H. Brown, master in chancery, under and by virtue of a decree rendered by the honorable court aforesaid in the case above named, at the May term, A. D. 1850.

Pursuant to notices issued to the solicitors of both parties, the master attended at his office in the city of Jackson, on the 19th day of August, 1850, for the purpose of hearing and determining the matters referred to him according to the decree aforesaid, at which the following depositions were presented by defendant, Charles B. Green, marked No. 1.

On reference to master W. H. Brown, U. S. circuit court, southern district of Mississippi.

E. P. FOURNIQUET and wife et al.
vs.
JOHN PERKINS.

Interrogatories propounded to Charles B. Green, a witness for defendant, resides in Hinds county, Mississippi. The answers to which to be read in evidence in the hearing before the master in the above entitled cause.

1st. Do you know the parties to the suit?

2d. Did you know the place called the "Briers" near Natchez, Mississippi, where the defendant resided in 1824, and where his first wife, the mother of complainants, died?

3d. Do you know and can you state whether the house and buildings attached and grounds about it, were in a finished or unfinished state at the death of Mrs. Perkins? Where were you residing at the time, and what opportunity did you have of seeing the place at or about the time of her death in August, 1824?

4th. Do you know what labor was performed by defendant after his wife's death in the improvements of the "Briers" property; whether or not he had hills cut down and roads made around it, the yard levelled and gullies stopped, and trees put out; the front circle enclosed with iron chain, and highly ornamented? Did he or not after his wife's death have the rooms enclosed adjoining the kitchen and wash-house, and have a fence put around the whole premises made of the most costly materials, and in the most durable manner, with cedar posts and cypress rails, and good, strong, substantial, as well as ornamental gates; if you recollect, please state particularly at what time the said work and

improvements were done, and whether they were done before or after the death of Mrs. Perkins, and state what in your opinion said property, in its unfinished state at the death of Mrs. Perkins, would have sold for if at that time thrown into the market.

5th. Do you know, and can you state, whether or not the defendant abandoned the property in 1825, after his wife's death, and removed every thing from it in the spring of 1825; and was the house then left vacant or not?

6th. Do you know any thing further material to the subject matter of your examination? If so, please state the same fully and particularly.

A. N. OGDEN,
Sol. for defendant.

It is agreed that the foregoing interrogatories and cross interrogatories attached may be answered before any magistrate, notary acting as commissioner, or judicial officer, and this agreement shall be his authority to act as commissioner in taking the testimony.

JOHN HENDERSON,
Sol. for complainants.
A. N. OGDEN,
Sol. for defendant.

On reference to W. H. Brown, master in chancery for the southern district court of the State of Mississippi.

E. P. FOURNIQUET and wife and
M. W. EWING and wife
vs.
JOHN PERKINS.

The complainants, saving and reserving to themselves all manner of legal exceptions to the divers interrogatories propounded to the witness, Charles B. Green, proceed to propound the following cross interrogatories:

1st. Were you acquainted with the defendant's establishment called the "Briers;" if yea, was it not an unusually fine and expensive establishment? Had it or not been in the course of erection from about the year 1819, and was it or not completed about the time of Mrs. Perkins' death in 1824; when did the defendant first take possession and occupy with his family the said establishment?

2d. Did you ever hear the defendant say what the said establishment (that is, the house and grounds) cost him? If you say that the establishment was built between 1819 and 1824, then state if it would or not be a fair estimate of its value in 1824 to say it was worth the cost of its erection, if erected with ordinary prudence, and at customary prices.

3d. Please state, as near as you can, the given value of all the land, and its improvements, called the "Briers," in August, 1824;

and state, also, if Judge Perkins was not considered a good economist in the expendi ure of his money.

4th. Do you know, or can you set forth, any other matter or thing that will be of advantage to the complainants, or material to the subject matter of this your examination? If yea, set forth the same as fully and at large as if particularly interrogated thereon.

E. P. FOURNIQUET,
JOHN HENDERSON,
Sol. for complainants.

The deposition of Charles B. Green, a witness called in behalf of the defendant, taken before me, L. V. Dixon, a commissioner of the circuit court of the United States, for the southern district of Mississippi, at my office in the city of Jackson, on the 17th day of August, 1850, to be and before the master in the taking of the account ordered by said court, sitting in chancery, in a certain cause therein depending, in which E. P. Fourniquet et ux. are complainants and John Perkins is defendant; and said witness being of lawful age, and by me first duly sworn, &c., in answer to the interrogatories hereto attached, deposeth and saith as follows, to wit:

Answer to interrogatory 1st. I do.

Answer to interrogatory 2d. I am well acquainted with it.

Answer to interrogatory 3d. I, with my family, lived at a residence called St. Helena, on a high bluff of the Mississippi river, about one mile southeast of Natchez, the land thereto attached adjoining the *the* place called the Briers; the two mansions were not more than a quarter of a mile apart. I resided there both before and after the day mentioned in the interrogatory; scarcely a day passed, when in health, but what I saw the mansion called the "Briers." The highway leading from St. Helena to Natchez passed in sight of it, and that leading from St. Helena to Bacon's landing, upon the Mississippi river, passed within 100 or 150 yards of the said Briers mansion; both these roads deponent travelled frequently, very frequently, and was frequently at Judge Perkins' residence, the Briers. I cannot speak with certainty of the day Mrs. Perkins died, but believe, however, that she died on the day mentioned in the interrogatory; the buildings and improvements of the ground must have been in an unfinished state on the 24th day of August, when Mrs. Perkins died.

Answer to interrogatory 4th. The defendant was several years making these improvements, and, as well as I now recollect, a considerable portion of the said improvements have been made after the death of Mrs. Perkins. There was great labor done in cutting down and removing hills of earth, and levelling the grounds. A hill between the house and the road was higher than the eaves of the house, which was one story high, (a high story,) the earth of the hill was carried off and thrown into bayous and marshes, a large bayou filled up with it, and a road passed over it The road to Bacon's landing run in part on *on* the line between the Briers and St. Helena. A hill of some 10 or 15 feet

projected over the line from the St. Helena side. This hill was cut down and removed also by the defendant, to make room for the road on the line; at this point the road ran on the line between the two tracts. These were jobs of no ordinary character, requiring great labor and much time. I, with some of my neighbors, could but remark that no man but Judge Perkins would pull down and remove such hills, and level such a surface for a yard and improvements. I believe that this labor was done by defendant's own hands, teams, and carts, and have no doubt of the fact; the improvements made were of a substantial character and costly. The yard enclosed, when the high hill was higher than the eaves of the house, by cypress or cedar posts and chains, put up in a circular form; gates and fencing on the line of the tract in the neighborhood of the house, of a neat and substantial character, put up; trees planted, a carriage house and stable erected. I do not recollect the enclosing of the rooms near the kitchen and wash house. I have, of course, no note of the time these improvements, and the completion of the houses, were in progress, but believe and have no doubt that a great portion of them, say one-half or three-fourths, must have been made after the death of Mrs. Perkins. The defendant was improving the Briers property for two, three, or four years after Mrs. Perkins' death. As stated before, these improvements were in part made by defendant's own hands, &c. He was a planter, and would make the improvements as his hands could be spared from his planting establishment; this, of course, would require time; this is my experience, as a planter, in making improvements. I cannot form a correct opinion of the value of the improvements at Mrs. Perkins' death; I can only suppose that eight or ten thousand dollars would have been a reasonable price.

Answer to interrogatory 5th. I do not know whether defendant abandoned the Briers in 1825. In the summer of that year I visited Blunt's Springs, and other points in North Carolina, for my health; returned in September, and found the yellow fever prevailing in Natchez, and some cases out of the city; one at Belview, the residence of Mrs. Girauld, my mother-in-law, less than $\frac{3}{4}$ of a mile from the "Briers." Judge Perkins, with his family, had left the Briers, to avoid the epidemic, I have no doubt. I do not now remember whether the defendant removed his furniture from the Briers in the spring of 1825.

Answer to interrogatory 6th. I have nothing further to add.

To the 1st cross interrogatory witness says, I was well acquainted with the property called the Briars. The improvements were of a costly, neat, and substantial character; the precise period the defendant commenced improving the premises I do not recollect, it may have been 1819. The improvements were certainly continued for several years, as stated in my answer to the 4th direct interrogatory, long after Mrs. Perkins' death. In 1821, and probably in part of 1822, the defendant occupied St. Helena, the residence before mentioned; of

the precise period he moved with his family to the Briars I do not recollect.

Answer to 2d cross inter. I never heard the defendant say what the grounds and improvements cost. Was privy to the purchase of the ground, and then heard defendant say what it cost per acre, but does not now remember the price. The improvements were not completed between the years 1819 and 1824, as before stated. In most cases the value of improvements would be their cost, if erected with ordinary prudence and at customary prices; but frequently improvements will not command cost though erected with care and prudence.

Answer to cross inter. 3d. The supposed value of the improvements, at the period mentioned, is stated in my answer to the 4th direct interrogatory, at $8,000 or $10,000. Judge Perkins was certainly considered a good economist in the expenditure of his money.

Answer to cross inter. 4th. I have nothing further to add.

CH. B. GREEN.

I, L. V. Dixon, commissioner of the United States circuit court for the southern district of Mississippi, do certify, that the foregoing deposition of Charles B. Green was taken at the time and place named in the caption thereof, and was then and there reduced to writing by me, in my own handwriting, and carefully examined by the witness, who signed the same in my presence after being by me duly sworn, &c. I further certify, that I am not of kin to either of the parties to said suit, nor in any manner interested in the event thereof.

L. V. DIXON, *Commissioner.*

Copy.

Deposition of Alvarez Fisk, No. 2.

E. P. Fourniquet and Wife et al.
vs.
John Perkins.

On reference to master, W. H. Brown, U. S. circuit court, southern district of Mississippi.

Interrogatories to Wm. Camell and to Purvine Postlewaithe, witnesses for defendant, residing in the city of New Orleans. The answer to which to be used in evidence in the hearing before the master in the above entitled case. (I consent Mr. Alvarez Fisk may be examined under the foregoing address and interrogatories herewith.)

JOHN HENDERSON.

1st. Do you know the parties to this suit?

2d. Did you know the place called the Briars, near Natchez, Mississippi, where the defendant resided in 1824, where his first wife, the mother of complainants, died?

3d. Do you know, and can you state, whether the house and buildings attached, and the grounds about it, were in a finished or unfinished state at the death of Mrs. Perkins; where were you residing at the time, and what opportunities did you have of seeing the place, at or about the time of her death, in August, 1824?

4th. Do you know what labor was performed by defendant after his wife's death in the improvements of the Briers property, whether or not he had hills cut down, and walls made around it; the yard levelled and gullies stopped, and trees put out; the front circle enclosed with iron chains and highly ornamented; did he or not, after his wife's death, have two rooms enclosed, adjoining the kitchen wash house, and have a fence put around the whole premises, made of the most costly materials, and in the most durable manner, with cedar posts and cypress rails, and good, strong, substantial, as well as ornamental gates? If you recollect, please state particularly at what time the said work and improvements were done; whether they were done before or after the death of Mrs. Perkins; and state what, in your opinion, said property, in its unfinished state, at the death of Mrs. Perkins, would have sold for if at that time thrown into the market.

5th. Do you know, and can you state, whether or not the defendant abandoned the property in 1825, after his wife's death, removed every thing from it in the spring of 1825, and was the house then left vacant, or not?

6th. Do you know, and can you state, any thing further material to defendant respecting the subject of this your examination?

A. N. OGDEN,
Sol. for defendent.

It is agreed that the foregoing interrogatories, and the cross interrogatories attached, may be answered before any magistrate, notary, acting as commissioner, or judicial officer; and this agreement shall be his authority to act as commissioner in taking this testimony.

JOHN HENDERSON,
Sol. for complainants.
A. N. OGDEN,
Sol. for defendant.

E. P. Fourniquet & Wife, M. W. Ewing & Wife,
vs.
John Perkins.

On reference to W. H. Brown, U. S. commissioner for the southern district of the State of Mississippi.

The complainants saving and reserving to themselves all manner of legal exceptions to the direct interrogatories propounded to the witnesses Camell and Postlewaithe, propound the following cross interrogatories:

1st. Were you a resident of the city of Natchez on or about the year 1824; what opportunity had you of knowing the situation of the defendant's property, called the "Briers," during the lifetime of his first wife?

2d. Do you know, of your own knowledge, that after the death of Mrs. Perkins the defendant did place upon his Briers property the particular improvements set forth and specified in the 4th direct interrogatory?

3d. After the death of Mrs. Perkins, did or did not the defendant, for a year or two, cease to occupy the Briers establishment; when he reoccupied it, did not the house and grounds require repairs; and are not these repairs the labors and improvements in relation to which you are interrogated by the defendant?

4th. Had or not the value of property, in Natchez and its vicinity, been on the increase from 1818 to 1824; did it or not begin to decline in price in 1826 and 1827?

5th. When did the defendant commence building the Briers establishment; when did he first occupy it; did you ever hear him say what the said establishment cost him, that is, the ground and buildings? If yea, please state.

6th. Was or not the defendant's Briers property an unusually fine and expensive establishment; would it or not be a fair estimate of its value, in the year 1824, to say that it was worth the cost of its erection?

7th. Is or not the defendant a judicious and close calculating man, and one that exacts from those that labor for him the full value of the payments he may make them?

8th. Do you know, or can you set forth, any other matter or things that will be of advantage to the complainants, or material to the subject-matter of this your examination? If yea, set forth the same as fully and at large as if particularly interrogated thereunto.

E. P. FOURNIQUET,
JOHN HENDERSON,
Solicitor for complainants.

THE STATE OF LOUISIANA,
Parish of Orleans, city of New Orleans.

E. P. FOURNIQUET & Wife et al.
vs.
JOHN PERKINS.

On reference to W. H. Brown, U. S. commissioner for the southern district for the State of Mississippi.

Deposition of one witness, taken and subscribed before me, J. L. Winter, second justice of the peace for the parish of Orleans, in the State of Louisiana, duly elected, sworn, commissioned, and acting as such, on the fifth day of August, A. D. eighteen hundred and fifty, at 4 o'clock, p. m., of said day, at the office of J. L. Winter, second jus-

tice of the peace for the parish of Orleans, at No. 65, Common *Common* street, in the city of New Orleans, in the parish of Orleans, in the State of Louisiana, in pursuance of a consent of parties hereto annexed, and to be read as evidence in a certain cause now pending before W. H. Brown, U. S. commissioner for the southern district of Mississippi, wherein E. P. Fourniquet et al. are plaintiffs, and John Perkins is defendant, on the part of the defendant, Alvarez Fisk, a witness known to me to be of lawful age, being to me, at the time and place aforesaid, produced, and being by me first duly sworn, upon the holy evangelists and according to law, to testify the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy in the suit aforesaid, did then and there, on his oath aforesaid, depose and say, and answer as follows, to wit:

To interrogatory 1st. Answer. Yes.

To interrogatory 2d. Answer. I did know the place called the Briers, near Natchez, where the defendant resided in 1824, and knew it at the death of his wife, in 1824.

To interrogatory 3d. Answer. I resided in Natchez, in 1824, and believe I was at the funeral of Mrs. Perkins, which took place from the Briers, and was in the habit of very frequently visiting at the Briers; the buildings were not entirely finished in 1824, but were in a very advanced state; the grounds were very much improved.

To interrogatory 4th. Answer. I know that there were very extensive improvements on the grounds after the death of Mrs. Perkins, such as cutting down hills and levelling the grounds around the house, setting out trees, filling up gullies, making roads, making a circle in front of the house, enclosed with posts and iron chains, and handsomely ornamented with shrubbery, &c.; there were also rooms enclosed, adjoining the kitchen and wash-house; also, a very handsome saloon, completed with glass sash all around, which glass was of a very costly kind; there was a very handsome fence and gates placed around the house and yard; the improvements referred to in this last interrogatory were principally, if not entirely, made subsequent to the death of Mrs. Perkins; if the property had been brought into market, at the death of Mrs. Perkins, in its then unfinished state, and embracing the entire tract of one hundred acres, I think it might have brought twelve thousand dollars, which was as near the value at that time as I can undertake to say.

To interrogatory 5th. Answer. Witness states, that the defendant continued to occupy more or less the premises, according to witness' recollection, until about the spring of 1833; at which time he sold the premises, and he thinks fifty acres of the land, to Mr. John Watt, of Natchez.

To interrogatory 6th. Answer. I have nothing further to say, except as to the value of the land, which I think defendant paid an extravagant price for at the time he purchased it of McMahon.

Cross interrogatories.

Answer to cross interrogatory 1st. I was a citizen and resident of Natchez in 1824, and, in my answers to the interrogatory in chief, have stated my opportunities of knowing the Briers.

To cross interrogatory 2d. Answer. Witness does know, of his own knowledge, that the particular improvements set forth in his answer to the 4th interrogatory in chief, were placed there subsequent to the death of Mrs. Perkins, by defendant, entirely or principally as stated in my previous answer.

To cross interrogatory 3d. Answer. Witness has stated in his answer to the 5th direct interrogatory, all he knows as to the occupancy of the Briers by defendant after his wife's death. As to the repairs, witness never knew the premises to be out of repair while the defendant continued to occupy them, which was, as far as witness knows, until the time he sold them.

To cross interrogatory 4th. Witness does not think property in Natchez, and its vicinity, had been on an increase in value from 1818 to 1824. Property was in a declining state from 1824 to 1830, after which time it advanced rapidly in value.

To cross interrogatory 5th. Answer. Witness thinks defendant commenced building the Briers in 1820 or 1821, but does not recollect when he first occupied it, perhaps in 1822. Witness has often heard defendant say that the property cost him over twenty thousand dollars.

To cross interrogatory 6th. Answer. The house was a very fine and expensive one; does not think it a fair estimate of its value in 1824, to say that it was worth the cost of its erection; does not think it would have brought any thing like it.

To cross interrogatory 7th. Answer. Yes; but he requires nothing more than what is just and right, as witness thinks.

To cross interrogatory 8th. Answer. Witness knows nothing further material.

ALVAREZ FISK.

Sworn to and subscribed before me, this 5th August, 1850,

J. L. WINTER,

Justice of the peace for the parish of Orleans.

THE STATE OF LOUISIANA,

Parish of Orleans, city of New Orleans.

I, J. L. Winter, second justice of the peace for the parish of Orleans, duly elected, sworn, commissioned, and acting as such in and for the city of New Orleans, in the parish of Orleans, in the State of Louisiana, do hereby certify and make known, that the foregoing deposition of Alvarez Fisk was taken before me, on the fifth day of August, A. D. eighteen hundred and fifty, at the time and place in the caption hereof mentioned; that the examinations, responses, and statements of each of said deponents were reduced to writing in my presence, and by the said deponent sworn to and subscribed in my presence, at the time and place aforesaid.

1026.

In testimony whereof I, J. L. Winter, second justice of the peace for the parish of Orleans aforesaid, do hereunto set my hand, at New Orleans, in the State of Louisiana, this fifth day of August, A. D. eighteen hundred and fifty.

(The law does not require that I should use a seal of office.)

J. L. WINTER,
Second justice of the peace for the parish of Orleans.

Costs—commission fee $5 00, paid by defendant.

Present, C. R. Clifton, solicitor for defendant.

The following depositions were received on behalf of complainants, viz., Jacob Loria, Wm. Parker, Samuel A. Cartwright.

(*Agreement.*)

E. P. Fourniquet et ux. and others
vs.
John Perkins.

Before commissioner, in Jackson, Mississippi.

It is agreed that all the depositions heretofore taken on this commission, or that may be hereafter taken while the same commission is open, and which may be taken on interrogatories crossed, and which purport to be taken before any magistrate, notary, acting as commissioner, or judicial officer, shall be considered without exception as to the officer taking the same, and waiving all commission for that purpose.

A. N. OGDEN,
Sol. for defendant.
JOHN HENDERSON,
Sol. for complainants.

2d August, 1850.

E. P. Fourniquet and Wife, and M. W. Ewing and Wife,
vs.
John Perkins.

Before William H. Brown, master in chancery, circuit court United States, southern district, Mississippi.

Interrogatories to be propounded to Samuel A. Cartwright, William Parker, Woodson Wren, Lemuel Pitcher, [and] Jacob Loria, whose answers, when taken, will be read in evidence in a certain cause now pending before W. H. Brown, esq., master in chancery, on reference from the United States circuit court, for the southern district of the State of Mississippi, in which E. P. Fourniquet and wife and M. W. Ewing and wife, are complainants, and John Perkins, defendant, on the part of the complainants.

Inter. 1st. Do you know the parties to this cause; how long have you known them?

Inter. 2d. Were you residing in Natchez or its vicinity in 1824; how long had you resided in Mississippi previous to that time?

Inter. 3d Were you acquainted with the defendant's establishment called the Briers in 1824; if yea, was it or not an unusually fine and expensive establishment; had it or not been in the course of erection from about the year 1819; and was it or not completed about the time of Mrs. Perkins' death in 1824?

Inter. 4th. Had or not the value of property in Natchez, and its vicinity, been regularly on the increase from 1818 to 1824; did it or not begin to decline in price at or about the year 1826 or 1827?

Inter. 5th. The Briers establishment having been built between the years 1819 and 1824, would it or not be a fair estimate of its value in 1824 to say it was worth the cost of its erection, if erected with ordinary prudence and at customary prices?

Inter. 6th. What was the price of cotton in 1824, and what the price of the crop grown that year; is it or not a part of the history of the State of Mississippi, that property, both real and personal, has advanced with high prices for cotton, and been depreciated by a low price?

Inter. 7th. Please state, as nearly as you can, the gross value of all the lands, and its improvement called the Briers, on 24th August, 1824; and state also if Judge Perkins was not considered a good economist in the expenditure of his moneys.

Inter. 8th. Was it or not understood that the money which Judge Perkins expended at Natchez was the product of his and his wife's plantation in the parish of Concordia, in the State of Louisiana?

Inter. 9th. Do you know, or can you set forth, any other matter or thing that will be of advantage to the complainants, or material to the subject matters of this your examination? If yea, set forth the same as fully and at large as if particularly interrogated thereunto.

JOHN HENDERSON,
Sol. for complainants.

Cross interrogatories.

The defendant excepts to the 5th and 8th interrogatories, as being, that one a leading question, and the other not pertinent to the subject matter of inquiry, not constituting legal evidence, as the witnesses are interrogated as to a general understanding on the subject; and reserving their exceptions, he propounds the following cross interrogatories:

1st. Where did you reside in 1824, and what opportunity had you of seeing and knowing the value of the Briers?

2d. Did you know Mrs. Perkins, and can you state the time of her death; where her husband was at the time it occurred; and, if absent from home, what had taken him away?

3d. Do you know what labor was performed by defendant, after his wife's death, in the improvement of the Briers property; whether there was not, after her death, certain hills cut down, a great deal of dirt scraped and hauled away, and roads made around the place, gullies

stopped, the yards levelled, and trees put out; the front circle enclosed with iron chains and highly ornamented, the back yard levelled off, and two rooms enclosed adjoining the kitchen wash house; and what do you believe that property, in its unfinished state, would have sold for, if thrown into the market at the time of Mrs. Perkins' death?

4th. Was not the fence around the whole premises made after Mrs. Perkin's death, and made of the most costly materials, and in the most durable manner, with cedar posts and cypress rails, and good, strong, substantial, as well as ornamental gates?

5th. Did not the defendant abandon the property in 1825, and remove every thing away from it in the spring of 1825; and was not the house then left vacant?

6th. Do you know, and will you state, any thing further within your knowledge to the advantage of the defendant, and material to the subject matter of your examination? If so, please state the same as fully and particularly as if interrogated specially there.

A. N. OGDEN,
Solicitor for defendant.

STATE OF LOUISIANA,
Parish of Orleans.

Be it known that before me, Francis N. Haralson, a commissioner of the United States in and for the eastern district of Louisiana, duly commissioned and qualified by the honorable the fifth circuit court of the United States and district aforesaid, under and by virtue of the several acts of Congress in such cases made and provided, and by virtue of the annexed agreement, on this 30th day of July, A. D. 1850, personally came and appeared, at New Orleans, in said State; first, Jacob Loria, a witness for the complainants in a certain cause now pending in equity in the circuit court of the United States, in and for the southern district of Mississippi, at Jackson, now on reference before the master commissioner, wherein E. P. Fourniquet and wife, and M. W. Ewing and wife are complainants, and John Perkins is defendant; and said Jacob Loria having been duly sworn, the truth, the whole truth, and nothing but the truth, to speak in answer to the annexed interrogatories, did depose and say:

In answer to interrogatory 1st. That he knows the parties to the present controversy, and has known them all for the last fifteen years and upwards.

In answer to interrogatory 2d. That he resided at Natchez in the year 1824, and came there in the spring of 1823.

Answer to interrogatory 3d. That about that time deponent became acquainted with defendant's establishment in Adams' county, called the "Briers;" has been there frequently; said establishment was about as fine as any he has seen in the south; does not know when said establishment was commenced, but it was finished in the year 1824.

In answer to interrogatory 4th. That in the years 1823 and 1824,

property in and about Natchez, Adams county, was high; it began to decline in value from the years 1826, 1827, and 1828.

In answer to interrogatory 5th. Deponent thinks that the establishment known as the "Briers" was well worth the cost of erection in the year 1824.

In answer to interrogatory 6th. During the year 1824 cotton averaged at Natchez from 12½ to 15 cents per pound; and that both real and personal property kept pace with the price of cotton in value.

In answer to interrogatory 7th. That he considers the "Briers" establishment, during the year 1824, was well worth, and even cheap, at twenty thousand dollars; John Watt purchased the said establishment, in the year 1837, for the sum of ten thousand dollars, as deponent understood.

In answer to interrogatory 8th. That he has always understood, and he believes, the general impression was, that the money which defendant, Perkins, expended at Natchez, was the result of the product of his and his wife's plantation in the parish of Concordia, Louisiana; said defendant never did any business at Natchez to deponent's knowledge.

In answer to interrogatory 9th. That he knows nothing of benefit or advantage herein to complainants.

Answers to cross interrogatories.

In answer to 1st cross interrogatory. That this deponent resided in Natchez, Mississippi, in the year 1824; that he acquired his knowledge of the value of the Briers by frequent visits to the houses of Messrs. Quigliss and Girault, next adjoining the "Briers," and from fishing and hunting in the neighborhood.

In answer to cross interrogatory 2d. That he knows of the matters herein inquired of.

In answer to cross interrogatory 3d. As this deponent does not know when Mrs. Perkins died, he cannot speak of improvements of that date; deponent saw improvements, such as chains and the garden, by whom made he cannot say; he cannot state the value of the property at the death of Mrs. Perkins as he does not know when she died.

In answer to cross interrogatory 4th. As deponent does not know at what time Mrs. Perkins died, he cannot answer this interrogatory.

In answer to cross interrogatory 5th. That between the years 1825 and 1828, the "Briers" place was abandoned, and left vacant for some time.

In answer to cross interrogatory 6th. That he cannot state any thing further of benefit or advantage to defendant herein; and further he sayeth not.

JACOB LORIA.

Sworn to and subscribed before me at New Orleans, this 30th day of July, A. D. 1850.

F. N. HARALSON,
Commissioner, U. S., eastern district, La.

And thereupon, on the same day, and under and by virtue of the same authority, and at the same place, next personally came and appeared William Parker, also a witness for the complainants in the cause styled in the caption, who, being by me duly sworn, the truth, the whole truth, and nothing but the truth, to speak in answer to the annexed interrogatories, did depose and say:

In answer to interrogatory 1st. That he is acquainted with complainants and defendant; has known complainants about twenty years and defendant for forty years.

In answer to interrogatory 2d. That he was residing in Natchez, Mississippi; had resided in Mississippi, in Natchez and its vicinity, since the year 1807.

In answer to interrogatory 3d. That he was acquainted with defendant's establishment known as the "Briers," near Natchez, in 1824; said establishment was a fine frame building, well constructed; the grounds about and the improvements were very fine; that he does not recollect when said establishment was commenced. Some time after the death of Mrs. Perkins, deponent visited the "Briars," found the house finished, and it was a fine building.

In answer to interrogatory 4th. That in the year 1823 property in Natchez and its vicinity was high; he cannot speak as to the year 1824, as he does not recollect dates.

In answer to interrogatory 5th. That he thinks the "Briers" establishment in 1824 was well worth the cost of its erection.

In answer to interrogatory 6th. That he does not recollect the price of cotton in the year 1824; the value of property, both real and personal, was governed by the price of cotton about that time.

Answer to interrogatory 7th. That he cannot speak as to the value of the "Briers" in August, 1824. Judge Perkins was considered a good economist in the expenditure of his money.

In answer to interrogatory 8th. That he does not know where Judge Perkins derived his money from which he expended at Natchez.

In answer to interrogatory 9th. That he does not know any thing further of benefit or advantage to the complainants herein.

Answers to cross interrogatories.

In answer to 1st cross interrogatory. That he resided in Natchez in 1824, as already stated; he visited the "Briers" on or about that time; cannot speak as to the value.

In answer to cross interrogatory 2d. That he knew Mrs. Perkins, but cannot say when she died or where her husband was at the time.

In answer to cross interrogatory 3d. That he has frequently seen the hands at work levelling the hills about the "Briers;" whether this was before or after Mrs. Perkins death he cannot say.

In answer to cross interrogatory 4th. That the "Briers" was well enclosed, but he does not recollect any thing about the fence, and

whether it was enclosed before or after Mrs. Perkins's death.

In answer to cross interrogatory 5th. That he does not know whether the defendant abandoned the "Briers" in 1825 or not; when this deponent visited the "Briers" it was vacant, or rather in charge of some one for defendant.

In answer to cross interrogatory 6th. That he knows nothing further of benefit or advantage to defendant herein.

Sworn to and subscribed before me, at New Orleans, this 30th day of July, 1850.

F. N. HAROLSON,
Com. of the United States, east. dist. of Louisiana.
WILLIAM PARKER.

And thereupon, on the 1st day of August, A. D. 1850, under and by virtue of the same authority and at the same place, next personally came and appeared Saml. A. Cartwright, a witness for complainants in the cause styled in the caption, who, being by me duly sworn the truth, the whole truth, and nothing but the truth, to speak in answer to the annexed interrogatories, did depose and say:

In answer to interrogatory 1st. That he is acquainted with the parties to this cause; has known complainants about fifteen years, and defendant about twenty-seven years.

In answer to interrogatory 2d. That he was a resident of Natchez, Mississippi, in the year 1824; had resided in Mississippi previously to that time about two years; that he was acquainted with defendant's establishment, known as the "Briers," in 1824; that he considered the "Briers" an unusually fine and expensive establishment; he does not know at what time the erection of said establishment commenced.

In answer to interrogatory 3d. The building at the "Briers" and improvements were completed some time in the year 1824, about the time of the death of Mrs. Perkins, and they were still improving the grounds.

In answer to interrogatory 4th. That it is the impression of this deponent that property came to a stand in 1824, and commenced declining in 1825.

In answer to interrogatory 5th. That he thinks the "Briers" establishment was well worth its cost of erection in the year 1824.

In answer to interrogatory 6th. That he does not recollect the price of cotton in the year 1824; as a general rule, the price of both real and personal property is governed by the price of cotton.

In answer to interrogatory 7th. That he cannot form a definite idea of the value of the property and improvements known as the "Briers." The defendant was always considered a good economist in his expenditures of money.

In answer to interrogatory 8th. That he knew defendant, Perkins, to be a moneyed man, but where he derived his resources from deponent cannot say.

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In answer to interrogatory 9th. That he knows nothing further of benefit or advantage to complainants herein.

Answers to cross interrogatories.

In answer to 1st cross interrogatory. That he resided in Natchez in 1824; had frequent opportunities of seeing the "Briers" about that time, but cannot speak as to the value thereof.

In answer to 2d cross interrogatory. That he knew Mrs. Perkins; does not recollect what time in 1824 she died, and does not recollect where her husband was at the time of her death, whether at home or absent.

In answer to cross interrogatory 3d. That the process of scraping and levelling about the premises of the "Briers" continued for some time after the death of Mrs. Perkins; that he knows of no roads made around the place; the scraping was for stopping the gulleys and levelling the yards; the fence, and the iron chains referred to herein were put up previously to Mrs. Perkins' death; cannot speak of the enclosing of the rooms on the back part of the house, and adjoining the kitchen; cannot say what the property in its unfinished state would have sold for at the time.

In answer to cross interrogatory 4th. That, as already stated, the fence was erected before the death of Mrs. Perkins; the fence was fine, and built of costly materials; knows nothing about the gates; does not recollect.

Answer to cross interrogatory 5th. Defendant left the "Briers" in the year 1825 in charge of some one, but thinks he returned in the winter of the same year, and occupied it that winter, and a portion of the next.

In answer to cross interrogatory 6th. That he knows nothing further of benefit or advantage to defendant herein, and further this deponent sayeth not.

SAM'L A. CARTWRIGHT.

Sworn to and subscribed before me, at New Orleans, this 1st day of August, A. D. 1850.

F. N. HARALSON, [SEAL.]
Commissioner of the United States, eastern dist. of Louisiana.

I, the undersigned commissioner aforesaid, do hereby certify, that on the days and year stated in the caption of the foregoing depositions I was attended by the witnesses, Jacob Loria, William Parker, and Samuel A. Cartwright, at my office in New Orleans, who, being severally sworn true answer to make to the annexed interrogatories, I reduced their respective answers to writing, in their presence, and, after carefully reading the same to them respectively, each subscribed his own answers in my presence as his deposition in the cause stated in the caption.

And I further hereby certify, that the questions propounded to the witnesses were the annexed interrogatories, and that their answers thereto constitute the foregoing depositions; and I further hereby certify, that said answers, as reduced to writing by me, have been altered or changed in nothing since the same were subscribed by the witnesses, but that all erasures and interlineations therein were made by me before signing, and with the approval of said witnesses; and I further hereby certify, that I am not of counsel for either party herein, nor in any way interested in the present controversy.

All which I hereby [certify], under my hand and seal, at New Orleans, on the day and year last aforesaid.

F. N. HARALSON, [SEAL.]
Commissioner of the United States, eastern district of Louisiana.

Cause adjourned until to-morrow morning, at 10 o'clock, a. m.

Tuesday, August 20, 1850, 10 *o'clock, a. m.*

Present, C. R. Clifton, sol. for defendant.

Thomas Bryan, a witness on the part of defendant, being by me first duly examined, cautioned, and sworn, did depose and say—

Question. Are you acquainted with a place called the "Briers," formerly the property and residence of the defendant, Judge Perkins?

Answer. I remember the place first in the spring of 1828, but it is many years since I have seen it.

Question. Did you at any time perform any labor on or about the premises; if yea, what kind of labor, and at what time?

Answer. As well as I recollect, I did some carpenter work on the premises in the spring of 1828.

Question. State, as near as you can recollect, what work remained to be done to complete the whole establishment, at the time you went there.

Answer. I think the whole work was completed, with the exception of the fences, upon which I was engaged, and some levelling of the grounds; I also built a fine pigeon-house for him at that time.

Question. What was the value of the improvements of all kinds done in the year 1828 on said premises, as near as you can estimate?

Answer. I think $500 would cover the whole.

Question. What would you estimate the value of the whole improvements of the place in the year 1828, not including the lands?

Answer. I should estimate the improvements at about $5,000 at that time.

Question. Were you regularly brought up to the carpenter's business; if yea, where?

Answer. I served a regular apprenticeship at the business, five or six years, in the city of Philadelphia.

Question. Do you know anything further material to either party in this case?

Answer. I do not. And further this deponent saith not.

THOS. BRIAN.

Tuesday, August 20, 1850.

On application of defendant by solicitor, Clifton, hearing adjourned until Monday, the 9th day of September next.

Monday, September 9th, 1850.

The master attended at his office, pursuant to adjournment. No further testimony was offered on behalf of either party.

W. H. BROWNE,
Master, &c.

Copy of agreement in regard to the depositions filed with the foregoing account.

Before commissioner at Jackson, Mississippi.

E. P. FOURNIQUET & others
vs.
JOHN PERKINS.

It is agreed that all the depositions heretofore taken in this commission, or that may be hereafter taken while the same commission is open, and which may be taken on interrogatories crossed, and which purports to be taken before any magistrate, notary acting as commissioner, or judicial officer, shall be considered, without exception as to the officer taking the same, and waiving all commission for that purpose.

A. N. OGDEN, *Sol. for def't.*
JOHN HENDERSON, *Sol. for comp't.*

2d August, 1850.

Afterwards, to wit, on the 14th day of November, 1850, the plaintiffs moved the court to confirm the master's report in this case.

Afterwards, to wit, on the 16th day of November, A. D. 1850, the following order was entered in this case.

E. P. FORNIQUET et al.
vs.
JOHN PERKINS.
In equity.

On motion, ordered by the court that the report of Wm. H. Brown, master in chancery in this cause at May term, 1850, be confirmed and the exceptions thereto overruled. It is further ordered by the court that the report of said master to the present term be also confirmed, except as to the sum of $500 allowed for improvements on "Briers," in 1828. It is further ordered by the court, that Wm. H. Brown, the

master in said cause, be allowed the sum of fifty dollars as a compensation for his report, made at the present term, to be paid by defendant, Perkins, within 60 days.

And afterwards, to wit, at the said November term of the court first aforesaid, to wit, on the twentieth day of November, in the year of our Lord one thousand eight hundred and fifty, the final decree was made by said court and entered on the minutes thereof, which decree is in the words and figures following, to wit:

E. P. Fourniquet and Harriet J. Fourniquet, his wife, and Martin W. Ewing and Ann S. Ewing, his wife,

vs.

John Perkins.

In chancery. Final decree.

The report of William H. Brown, master in chancery, made in the above stated case, and filed herein on the 3d day of April, A. D. 1850, having been confirmed on a former day of this term; and the report of said master made herein and filed on the first day of October, A. D. 1850, having also been confirmed on a former day of this term, except as to the said sum of five hundred dollars therein stated as having been paid by defendant subsequent to the death of Mrs. Perkins, wife of said defendant: It is now thereupon further ordered, adjudged, and decreed, that the said complainants, the said Harriet J. Fourniquet, together with the said Edward P. Fourniquet, in right of his said wife, but to her sole and separate use; and the said Ann S. Ewing, together with the said Martin W. Ewing, in right of his said wife, but to her sole and separate use, do have and recover of the said defendant, John Perkins, the amount stated in said first named report, to wit, the sum of sixteen thousand nine hundred and sixty-eight dollars and seventy-six cents ($16,968 76,) to be paid to the said complainants by the said defendant within thirty days hereafter, together with interest thereon at the rate of eight per cent. per annum, from first day of April, 1850, or in default thereof that said complainants have execution therefor. It is further ordered, adjudged, and decreed, that said complainants do recover of the defendant all their costs hereby in this suit incurred and herein to be taxed. S. J. GHOLSON.

November 20, 1850.

From which decision the defendant, John Perkins, prays an appeal to the Supreme Court of the United States, which is granted upon his giving bond conditioned according to law.

United States of America,
Southern district of Mississippi, ss.

Know all men by these presents, that we, John Perkins and Joseph E. Davis, are held and firmly bound unto Edward P. Forniquet and

Harriet J. Forniquet, his wife, and Martin W. Ewing and Ann S. Ewing, his wife, in the just and full sum of thirty-five thousand dollars, lawful money of the United States, to be paid to the said Edward P. Fourniquet and Harriet J. Fourniquet, his wife, and Martin W. Ewing and Anna S., his wife, their lawful attorneys, executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this day of November, one thousand eight hundred and fifty.

The condition of this obligation is such, that whereas at a term of the circuit court of the United States, for the southern district of Mississippi, commenced and held at the city of Jackson, on the first Monday of November, A. D. one thousand eight hundred and fifty, a final decree was rendered by said court, sitting in chancery, in favor of the said Edward J. Fourniquet and Harriet J., his wife, and Martin W. Ewing and Ann S., his wife, complainants, against the said John Perkins, defendant, for the sum of sixteen thousand nine hundred and sixty-eight dollars and seventy-six cents, with legal interest, from the first day of April, A. D. 1850, and costs of suit. And whereas the said John Perkins has prayed for and obtained an appeal therefrom to the Supreme Court of the United States, which appeal is granted upon his executing this bond according to law with the above named Joseph E. Davis as his security therein.

Now, if the said John Perkins shall prosecute his said appeal to effect, and shall well and truly pay and satisfy the amount of said decree, and all such damages, interest, and costs as the said Supreme Court of the United States shall adjudge in the premises, if he, the said John Perkins, shall fail to make his plea good, then and in that case this obligation to be null and void, otherwise to remain in full force and virtue.

JOHN PERKINS, [SEAL.]
By his attorney in fact, C. R. CLIFTON,
J. E. DAVIS. [SEAL.]

Witness—W. H. BROWN,
H. J. HARRIS.

I approve of the above and foregoing bond and security.

S. J. GHOLSON,
Judge U. S. D. C. for Mississippi.

Know all men by these presents that I, John Perkins, of the parish of Madison, in the State of Louisiana, have this day nominated, constituted, and appointed, and do by these presents nominate, constitute, and appoint, my son, William Perkins, of the same parish and State, and Caswell R. Clifton, of the city of Jackson, in the State of Mississippi, my true and lawful attorneys, for the following purpose, that is to say:

There is now pending in the circuit court of the United States for the southern district of Mississippi, at Jackson, on the chancery side of

master in said cause, be allowed the sum of fifty dollars as a compensation for his report, made at the present term, to be paid by defendant, Perkins, within 60 days.

And afterwards, to wit, at the said November term of the court first aforesaid, to wit, on the twentieth day of November, in the year of our Lord one thousand eight hundred and fifty, the final decree was made by said court and entered on the minutes thereof, which decree is in the words and figures following, to wit:

E. P. Fourniquet and Harriet J. Fourniquet, his wife, and Martin W. Ewing and Ann S. Ewing, his wife,

vs.

John Perkins.

In chancery. Final decree.

The report of William H. Brown, master in chancery, made in the above stated case, and filed herein on the 3d day of April, A. D. 1850, having been confirmed on a former day of this term; and the report of said master made herein and filed on the first day of October, A. D. 1850, having also been confirmed on a former day of this term, except as to the said sum of five hundred dollars therein stated as having been paid by defendant subsequent to the death of Mrs. Perkins, wife of said defendant: It is now thereupon further ordered, adjudged, and decreed, that the said complainants, the said Harriet J. Fourniquet, together with the said Edward P. Fourniquet, in right of his said wife, but to her sole and separate use; and the said Ann S. Ewing, together with the said Martin W. Ewing, in right of his said wife, but to her sole and separate use, do have and recover of the said defendant, John Perkins, the amount stated in said first named report, to wit, the sum of sixteen thousand nine hundred and sixty-eight dollars and seventy-six cents ($16,968 76,) to be paid to the said complainants by the said defendant within thirty days hereafter, together with interest thereon at the rate of eight per cent. per annum, from first day of April, 1850, or in default thereof that said complainants have execution therefor. It is further ordered, adjudged, and decreed, that said complainants do recover of the defendant all their costs hereby in this suit incurred and herein to be taxed. S. J. GHOLSON.

November 20, 1850.

From which decision the defendant, John Perkins, prays an appeal to the Supreme Court of the United States, which is granted upon his giving bond conditioned according to law.

United States of America,
Southern district of Mississippi, ss.

Know all men by these presents, that we, John Perkins and Joseph E. Davis, are held and firmly bound unto Edward P. Forniquet and

Harriet J. Forniquet, his wife, and Martin W. Ewing and Ann S. Ewing, his wife, in the just and full sum of thirty-five thousand dollars, lawful money of the United States, to be paid to the said Edward P. Fourniquet and Harriet J. Fourniquet, his wife, and Martin W. Ewing and Anna S., his wife, their lawful attorneys, executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this day of November, one thousand eight hundred and fifty.

The condition of this obligation is such, that whereas at a term of the circuit court of the United States, for the southern district of Mississippi, commenced and held at the city of Jackson, on the first Monday of November, A. D. one thousand eight hundred and fifty, a final decree was rendered by said court, sitting in chancery, in favor of the said Edward J. Fourniquet and Harriet J., his wife, and Martin W. Ewing and Ann S., his wife, complainants, against the said John Perkins, defendant, for the sum of sixteen thousand nine hundred and sixty-eight dollars and seventy-six cents, with legal interest, from the first day of April, A. D. 1850, and costs of suit. And whereas the said John Perkins has prayed for and obtained an appeal therefrom to the Supreme Court of the United States, which appeal is granted upon his executing this bond according to law with the above named Joseph E. Davis as his security therein.

Now, if the said John Perkins shall prosecute his said appeal to effect, and shall well and truly pay and satisfy the amount of said decree, and all such damages, interest, and costs as the said Supreme Court of the United States shall adjudge in the premises, if he, the said John Perkins, shall fail to make his plea good, then and in that case this obligation to be null and void, otherwise to remain in full force and virtue.

JOHN PERKINS, [SEAL.]
By his attorney in fact, C. R. CLIFTON,
J. E. DAVIS. [SEAL.]

Witness—W. H. BROWN,
H. J. HARRIS.

I approve of the above and foregoing bond and security.

S. J. GHOLSON,
Judge U. S. D. C. for Mississippi.

Know all men by these presents that I, John Perkins, of the parish of Madison, in the State of Louisiana, have this day nominated, constituted, and appointed, and do by these presents nominate, constitute, and appoint, my son, William Perkins, of the same parish and State, and Caswell R. Clifton, of the city of Jackson, in the State of Mississippi, my true and lawful attorneys, for the following purpose, that is to say:

There is now pending in the circuit court of the United States for the southern district of Mississippi, at Jackson, on the chancery side of